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No.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

BYRON W. YORK, JOSEPH VAN ROEKEL, ALAN V. PAREIS, HELEN WESTBERT, JOE E. LOGSDON III, and PEYTON KUNCE, Individually as as Members of THE ANNA ADMINISTRATIVE COMMISSION II OF THE SOUTHEASTERN PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA, on behalf of said ANNA ADMINISTRATIVE COMMISSION II and on behalf of THE UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA and SOUTHEASTERN ILLINOIS PRESBYTERY OF THE UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA,

Petitioners,

vs.

THE FIRST PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, an Illinois Not-For-Profit Corporation, ANNA PRESBYTERIAN FOUNDATION, an Illinois Not-For-Profit Corporation, and CLAIR S. ALBRIGHT, HELEN OWENS, CHARLOTTE RIFE, JOHN LUTZ, LISA WELLS, JANE RADER, JOEL MELLER, NORMAN HICHAM and JOYCE VERBLE, Individually and as Members of the Session of THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT

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QUESTIONS PRESENTED

Does a hierarchical religious denomination (The United Presbyterian Church in the United States of America) which, by its constitution, has subordinate governmental bodies known as judicatories subject to its jurisdiction and control, have the constitutional right, in the free exercise of religion guaranteed by the First Amendment to enforce its explicit denominational constitutional provisions giving it and its inferior governing body (judicatory) known as a presybtery, the right and means to take temporary control of and over the use of the property and assets of a particular local church?

Does the Illinois Appellate Court decision in this case constitute impermissible judicial intrusion into the government and internal administration of a hierarchical church in violation of the First Amendment?

PARTIES TO THE PROCEEDING

The caption of the case in this Court contains the names of all parties. The only corporations are the Respondents (defendants), The First Presbyterian Church of Anna, Illinois and Anna Presbyterian Foundation, both of which are Illinois Not-For-Profit Corporations.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT

Byron W. York, Joseph Van Roekel, Alan V. Pareis, Helen Westberg, Joe E. Logsdon III, and Peyton Kunce, Individually and as Members of The Anna Administrative Commission II of the Southeastern Presbyterian Church of the United States of

America, on behalf of said Anna Administrative Commission II and on behalf of The United Presbyterian Church of The United States of America and Southeastern Illinois Presbytery of the United Presbyterian Church of the United States of America respectfully petition for a Writ of Certiorari to review the judgment of the Appellate Court of Illinois, Fifth District, in the above case docketed in that Court as No. 5-83-0716.

OPINIONS BELOW

The opinion of the Appellate Court of Illinois, Fifth District, is reported in 474 N.E.2d 716, 85 Ill.Dec. 756; rehearing denied December 12, 1984. Petition for Leave to Appeal was denied by the Illinois Supreme Court on April 2, 1985 without comment; no citation available. Also included in the Appendix is a copy of the unreported Judgment Order of the Trial Court dated October 17, 1983.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, Amend. I:

> "Congress shall makle no law respecting an establishment of religion, or prohibiting the free exercise thereof ***."

U.S. Constitution, Amend. XIV, Sect. 1:

> "*** nor shall any State deprive any person of life, liberty, or property, without due process of law ***."

JURISDICTIONAL STATEMENT

The judgment sought to be reviewed is that of the Appellate Court of Illinois for the Fifth District, an intermediate appellate court. That Court entered a final judgment on November 9, 1984. A petition for rehearing was denied on December 12, 1984. A Petition for Leave To Appeal was timely filed in the Illinois Supreme Court, the highest court of Illinois, and said Petition was denied without comment on April 2, 1985.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3) in that a right, privilege or immunity has been set up or claimed under the First Amendment to the Constitution of the United States, first in the Complaint commencing the action, then on appeal to the appellate court and in the Petition for Leave to Appeal filed in the Illinois Supreme Court. The Appellate Court decision and judgment here appealed from expressly considers and determines the issue of applicability and violation of the First Amendment as did the Trial Court's Judgment Order.

STATEMENT OF THE CASE

From the inception of and throughout this litigation, a right, privilege or immunity has been set up or claimed under the First Amendment to the Constitution of the United States, first in the Complaint for Declaratory Judgment, continuing in the appeal to the Appellate Court of Illinois, Fifth District, and in the Petition for Leave to Appeal to the Illinois Supreme Court. Both the Trial Court's findings, conclusions and judgment and the Appellate Court decision and judgment here appealed from expressly consider and determine the issue of applicability and violation of the First Amendment.

The Trial Court, in its Judgment Order made extensive and detailed findings of fact (C 118-138). Appellants did not challenge those findings of fact in the Appellate Court as being either erroneous or unsupported by the evidence. Neither did the Appellate Court find any fault with such findings. Therefore, the facts as found by the Trial Court, who heard the testimony of the witnesses and considered all of the evidence, should be taken as conclusive.

Those facts are as follows (as taken from the Trial Court's findings):

When used hereafter, the following unqualified terms shall precisely be defined as follows:

UPCUSA	United Presbyterian Church in the United States of America, an unincorporated religious association.
Synod	The Synod of Lincoln Trail of UPCUSA
Presbytery	The Southeastern Illinois Presbytery of the United Presbyterian Church in the United States of America, an unincorporated religious association.
Anna Church	The First United Presbyterian Church of Ann, Illinois, an unincorporated religious association, and a particular church (as defined in Form of Government, Book of Order, Chapter IV, page [marginal reference] 34.01 et seq.) of UPCUSA as it existed prior to October 26, 1980.
Anna Church Corporation	The First Presbyterian Church of Anna, Illinois, organized as an Illinois not-for-profit corporation, and prior to its change of name on October 27, 1980, known as The First United Presbyterian Church of Anna, Illinois, an Illinois not-for-profit corporporation.
Anna Presbyterian Foundation	An Illinois not-for-profit corporation organized and existing since October 27, 1980.
Book of Order	The 1980-81 Edition of the Book of Order consisting of Part II of the Constitution of UPCUSA, published by the Office of the General Assembly of UPCUSA.
Anna Administrative Commission I	The investigative commission appointed on November 13, 1980 by Presbytery.

Anna Administrative Commission II	The commission consisting of the individually named plaintiffs appointed by Presbytery on November 20, 1980, to replace the Session of the Anna church under the provisions of Chapter XI, Section 15 (¶41.15) of Form of Government in the Book of Order.
Judicatory	The governing body of the united parts of UPCUSA consisting, in ascending order, of sessions, presbyteries, synods and a general assembly as set forth in Chapter V, "Of Church Government", page (marginal reference) 35.01 et seq. of Form of Government, Book of Order.
Session	The ruling judicatory of a particular church of UPCUSA as defined, and with the powers and jurisdiction set forth, in Form of Government, Book of Order, Chapter XI, page (marginal reference) 41.01 to 41.25.
Hierarchal or Hierarchical	Government church structure consisting of a series of ascending bodies called judicatories commencing at the lowest level with a Session, then Presbytery, then Synod, and finally, at the highest level, the General Assembly, with each judicatory having control of those below it, as defined and applied by the courts, particularly the Illinois Supreme Court in *Lowe v. First Presbyterian Church of Forest Park,* 1974, 56 Ill.2d 404, 308 N.E.2d 801, 805 and by the United States Supreme Court in *Presbyterian Church v. Mary E. B. Hull Memorial Presb. Church,* 1969, 393 U.S. 440, 442, 89 S.Ct. 601, 602.

1. The United Presbyterian Church in the United States of America ("UPCUSA") is an unincorporated religious union of particular Presbyterian churches, founded in 1706, and is organized and governed in accordance with the constitution of the UPCUSA which sets forth the form of government and rules of discipline of the church.[1] (Tr. pp. 17-19, 23, 119-120)

2. The Book of Order (Pl. Exh. 1) sets forth in Part II, Form of Government, the "system of union" which UPCUSA has adopted;[2] it describes a local or particular church as those persons associated together for worship and submitting to the form of government;[3] it specifies that all parts of the denomination comprise one Church;[4] and it provides that "The General

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[1] The entire constitution of UPCUSA consists of the Book of confessions and the Book of Order; the Book of Order is divided into three parts consisting of the Directory for the Worship of God, the Form of Government and the Book of Church Discipline.

[2] Chapter 1, ¶ (marginal reference) 31.00

[3] Chapter IV, ¶34.01

[4] Chapter V, ¶35.01 which provides:

> "The radical* principles of Presbyterian Church government and discipline are: that the several different congregations of believers, taken collectively, constitute one Church of Christ, called emphatically the Church; that a larger part of the Church, or a representation of it, should govern a smaller, or determine matters of controversy which arise therein; that, in like manner, a representation of the whole should govern and determine in regard to every part, and to all the parts united: that is, that a majority shall govern; and consequently that appeals* may be carried from lower to higher judicatories, till they be finally decided by the collected wisdom and the united voice of the whole Church. For these principles and this procedure, the example of the apostles and the practice of the primitive Church are considered as authority.
>
> *The text of this section was adopted circa 1793 by the General Assembly of the Presbyterian Church. In this quotation the

Assembly is the highest judicatory of this Church and shall represent in one body all of the particular churches thereof".[5] (Tr. pp. 17-19)

3. By the provisions of the Constitution each particular church is immediately governed by a judicatory known as a "Session", and the particular churches are organized within the UPCUSA into district groups, each under the authority and jurisdiction of a superior judicatory known as a "Presbytery", composed of ministers and elders representing all the particular churches within the bounds of the Presbytery. The Constitution further provides for judicatories superior to the Presbyteries known as "Synods", and for a supreme judicatory known as the "General Assembly of the United Presbyterian Church in the United States of America".[6] (Tr. pp. 17-19)

4. The Constitution defines the powers, duties and composition of the various judicatories, sets forth the methods of determining questions of faith, government, and discipline, arising within the church, and provides a procedure whereby any person or persons aggrieved or complaining of any matter in the church may have his or their charge or complaint heard before the constituted courts of the church, and may carry appeals from the lower to the higher judicatories.[7]

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word 'radical' is used in its primary meaning of 'fundamental and basic,' and the word 'appeals' is used in a general sense rather than with reference to a case involved in judicial process."

[5] Chapter XIV, ¶44.01.

[6] The role and functions of the Session, Presbytery, Synod and General Assembly are outlined in Part II, Chapter XI, XII, XIII and XIV, respectively, of the Book of Order

[7] Part III of the Book of Order (the Book of Church Discipline) contains the provisions which set forth the methods of determining questions and controversies within the denomination.

5. Plaintiff, the Southeastern Illinois Presbytery of UPCUSA (Presbytery) is one such superior judicatory, having jurisdiction over the various particular churches as defined by The Book of Order, Part II (Form of Government), Chapter IV, ¶34.01, located within its geographical area including the Anna Church.

6. The individual Plaintiffs are members of "Anna Administrative Commission II" elected by Presbytery pursuant to The Book of Order, Form of Government, Chapter XI, ¶41.15, to replace and function as the Session of the Anna Church.[8] (Pl. Exh. 38; Tr. P. 201)

7. The UPCUSA Constitution provides that the First United Presbyterian Church of Anna, Illinois (the Anna Church) is an unincorporated religious association and ecclesiastical congregation which is separate and distinct from the corporation with the same name (Book of Order, Part II, Chapter XXXII, ¶62.04; Tr. pp. 24-26)

8. Defendant, The First Presbyterian Church of Anna, Illinois, an Illinois not-for-profit corporation, which was known as the First United Presbyterian Church of Anna, Illinois prior to October 27, 1980, when its name was changed, is a corporation whose original purpose was to hold title to both real and personal property for the unincorporated Anna Church, pursuant to the express provisions of The Book of Order, Form of Government.[9]

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[8] Chapter XI, Section 41.15 of The Book of Order provides:

> "Whenever, after a thorough investigation, and after full opportunity to be heard has been accorded to the session in question, the presbytery of jurisdiction shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint a commission composed of ministers and ruling elders, *with the full power of a session. This commission shall take the place of the existing session,* if any, which shall cease to act until such time as the presbytery shall otherwise direct." (Emphasis added)

[9] Chapter XXXII, ¶62.04

9. The individual Defendants are the Pastor and Session members (elders) of the Anna Church as of October 26, 1980 who concurred in, voted in favor of and condoned the action of a majority of the members of the congregation of the Anna Church in the actions it took in attempting to sever the Anna Church from UPCUSA.

10. The Anna Church and its congregation at Anna, Illinois, was organized in 1866 as part of the Presbyterian Church in the U.S.A. which ultimately became, through merger, a part of UPCUSA and at all times subsequent the Anna Church has been and is now a constituent part of UPCUSA (Pl. Exh. 4; Tr. pp. 30, 142).

11. The Alton Presbytery, in 1866, then a judicatory of the Presbyterian Church in the U.S.A., organized the Anna Church (Pl. Exh. 4; Exh. 8 and 8 A; Tr. p. 142).

12. In the years 1866 to and including October 28, 1980, the Anna Church acquired and the Anna Church Corporation holds title to all of the real estate described in ¶23 of the Amended Complaint and Plaintiffs' Exhibit 27 (Tr. p. 6-7), as well as certain personal property, including books of worship, hymnals, books, records, furniture and furnishings, bank account and other personal property, title to all of which is now vested in the Anna Presbyterian Foundation, an Illinois not-for-profit corporation organized and existing since October 27, 1980 (see Defendants' Answer to ¶23 of the Amended Complaint).

13. From the time of its organization in 1866 until October 26, 1980, the Anna Church was and publicly acknowledged itself to be a constituent part of and a particular church in the UPCUSA, the Alton Presbytery and its successor, the Southeastern Illinois Presbytery of UPCUSA as evidenced by, *inter alia,* the following:

(a) The Articles of Incorporation of the Anna Church Corporation, then known as The First Presbyterian Church of Anna, Illinois, as they existed on October 26, 1980, provided, in Article 5, as follows:

"The purpose or purposes for which the corporation is organized are: To constitute and organize the members of the corporation as a church, to covenant and agree to walk together as disciples of Jesus Christ in a church relation according to the provisions of the constitution of The United Presbyterian Church in the United States of America and to exercise the government of said church under some certain and definite form."

(Pl. Exh. 23 and 24)

(b) The By-Laws of the Anna Church Corporation provided, as of October 26, 1980, as follows:

"Article III, Section 2.

The office of president of the corporation shall be held by the same person who is Pastor Of The Congregation who shall be elected and chosen in accordance with the Constitution of the United Presbyterian Church in the United States of America."

"Article V, Section 1.

The corporation shall have one class of members, namely, those person who have entered into active membership in a church relation according to the provisions of The Constitution of The United Presbyterian Church in the United States of America as a particular church in the City of Anna, County of Union and State of Illinois, under and by authority of the Presbytery of Southeastern Illinois, or its successors in interest."

"Article IV, Section 6.

The Pastor shall preside at each meeting of the congregation provided that in the event that the pulpit is vacant, the Pastor is not present, or the Pastor and

Session agree that the subject matter could be discussed make it more appropriate, then some other minister authorized by the Presbytery may be invited by the Session to preside at any such meeting."

"Article IX, Section 1.

The corporation, being a particular church of the United Presbyterian Church in the United States of America, is subject to each and every provision contained in the Constitution thereof both for civil and ecclesiastical purposes, except that in the event of any conflict between civil and ecclesiastical law, with regard to civil matters, the corporation is subject to the "General not-for-profit Corporation Act" of the State of Illinois, Illinois Revised Statutes, Chapter 32, Sec. 163(a) et seq., and these by-laws shall be interpreted accordingly."

"Article IX, Section 2.

To the extent not herein provided, all matters pertaining to the internal affairs of the corporation, including the rules, procedure, and any other matters pertaining to, for the nomination, election, and ordaining of officers and members of the Session, and the calling, holding and conduct of meetings, shall be in accordance with the Constitution of the United Presbyterian Church in the United States of America, as amended from time to time, except to the extent that such constitution does not extend to certain matters of order, in which case Roberts Rules of Order shall govern."

"Article IX, Section 3.

Any term used in these by-laws and not defined herein or in said "General not-for-profit Corporation Act", shall be defined or interpreted by, or by reference to the Constitution of the United

Presbyterian Church in the United States of America, which by this reference thereto is hereby incorporated herein as a part hereof."

(Pl. Exh. 24)

(c) The Anna Church obtained its pastor pursuant to the Constitution of UPCUSA and subject to the approval of Presbytery (Pl. Exh. 8; Tr. pp. 145-147).

(d) The Anna Church pursuant to the provisions of the UPCUSA Constitution,[10] requested and obtained permission from Presbytery in matters relating to the purchase, sale or mortgage of real estate (Pl. Exhs. 9, 10, 11, 12, 13, 14, 15, 16, 17; Tr. pp. 148-157).

(e) Defendant, Clair S. Albright, by his vows at his installation as Pastor of the Anna Church endorsed the government of the UPCUSA and vowed that he would honor its discipline; he promised to further the peace, unity and purity of the UPCUSA Church and that he would be a faithful minister, active in government and discipline in serving in the Courts of the Church and in his ministry (Book of Order, Form of Government, Chapter XX, ¶50.12 through 50.129; Tr. pp. 51-55 and 467-468).[11]

(f) Each of the individually named Defendants who were ruling elders and members of the Session of the Anna Church as of October 26, 1980, as part of his vows endorsed the government of UPCUSA and vowed he would

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[10] Book of Order, Form of Government, Chapter XXXII, ¶¶62.11 and 62.12

[11] The installation vows or obligations of a pastor are contained in the Book of Order, Part II (Form of Government), Chapter XX, ¶¶50.12 - 50.129; they are identical to the vows and undertakings of a Minister upon ordination, found in Chapter XIX, ¶¶49.041 to 49.049 (Tr. pp. 51-54).

honor its discipline (Tr. pp. 54-56; Book of Order, Form of Government, Chapter XVII, ¶47.08 to 47.089).

14. On October 26, 1980, a meeting of the congregation of the Anna Church, which was also designated as a meeting of the members of the Anna Church Corporation, was held, the stated purpose of which was to consider proposed amendments to the Articles of Incorporation and the by-laws of the church corporation. Motions were made and declared passed at said meeting adopting the proposed amendments which deleted all references in the Articles of Incorporation to the word "united" in the name of the corporation and deleted from the purposes of the corporation all references to the organization, covenant and agreements that the Anna Church walk together in a church relation according to the provisions of the Constitution of UP-CUSA and to exercise the government of said church under certain and definite form. Said proposed amendments further provided that the Anna Church exist in an autonomous congregation separate and independent from and of any denomination. That meeting was presided over by the Pastor of the Anna Church, Clair S. Albright. (Pl. Exh. 24; Def. Exh. G).

15. On October 27, 1980, Defendants organized the Anna Presbyterian Foundation to which was conveyed on October 28, 1980, all of the real estate of the Anna Church (Pl. Exh. 26, 27; Tr. pp. 6-7).

16. Thereafter, Defendant, Clair S. Albright, the Pastor of the Anna Church, by letter requested that his name be removed from the rolls of Presbytery as an ordained minister (Tr. pp. 193 and 475).

17. Based upon the report of the Ministerial Relations Committee of Presbytery the General Council of Presbytery recommended to Presbytery at its stated meeting held on November 13, 1980, that Presbytery appoint an administrative commission to investigate the reasons for disunity in the Anna Church and to report its findings and recommendations to Presbytery at its adjourned meeting on November 20, 1980 (Pl. Exh. 32; Tr. p.

160). The minutes of the stated meeting of Presbytery held on November 13, 1980, show on their face that the recommendations of the General Council were adopted by Presbytery. That administrative commission for investigation purposes referred to as Anna Administrative Commission I was formed at that time consisting of the individually named Plaintiffs (Tr. p. 194).

18. Anna Administrative Commission I met with the Session of the Anna Church on November 15, 1980, and made an investigation of the actions of the individually named Defendants herein and of the congregation of the Anna Church (Tr. pp. 195-200; see also the Report of the Anna Administrative Commission contained, in full, on pp. 3 to 9 of Pl. Exh. 38).

19. By letter dated November 14, 1980, addressed to Joyce Verble, Clerk of Session of the Anna Church, and sent by Certified U.S. Mail, Return Receipt Requested, the Session of the Anna Church was advised of the appointment by Presbytery on November 13, 1980, of Anna Administrative Commission I with instructions to report its findings and recommendations to Presbytery at an adjourned meeting on November 20, 1980. Because of the possible recommendation of removal of the Session of the Anna Church at the November 20 adjourned meeting, the Session was by such notice invited and encouraged to be present and to participate in a hearing on such recommendations. The return receipt signed by Joyce Verble indicates that this notice was received by her as Stated Clerk of Session of the Anna Church on November 15, 1980. (Pl. Exh. 33; Tr. pp. 166-169 and 199-200) Plaintiffs' Exhibit 33 also shows on its face that a copy was sent to Defendant, Clair S. Albright.

20. The Anna Administrative Commission I submitted its written report which appears, in full, in the Minutes of the Adjourned Meeting of Presbytery held on November 20, 1980, and which is in evidence as Plaintiffs' Exhibit 38. Following a detailed recitation of the activities of Anna Administrative Commission I, the Commission reported its conclusion as follows:

"After a thorough investigation, it is the opinion of the Commission that the Session of the First United Presbyterian Church of Anna had acted unwisely and that it had shown utter disregard of the Book of Order of the United Presbyterian Church in the U.S.A.; and for the peace and unity of members of the congregation to which it was called to minister. This Session had participated in the spreading of rumors and innuendos about its members, the congregation, the Presbytery, and other judicatories of the Church.

It is the opinion of the Commission, that presently the Session is divided, it is divisive, and it is unable to perform its duties as outlined in Chapter XI of the Form of Government. We also feel that the Session is unable to comply with Section 35.02 of Chapter V of the Form of Government, in that it is not able to proceed with any recognized form in carrying out its duties."

(Pl. Exh. 38, P. 5)

21. Following debate, Presbytery adopted the recommendations of Anna Administrative Commission I as follows:

"1. That the Session of the First United Presbyterian Church of Anna be notified of this report, and all actions taken by the Presbytery of Southeastern Illinois, meeting in adjourned session in Effingham, Illinois, on November 20, 1980;

2. That the Session of the First United Presbyterian Church of Anna be removed by reason stated in the Commission's report, in accordance with Chapter XI, Section 41.15, of the Form of Government, and that an administrative commission be appointed with full powers of the session;

3. That the Commission be authorized to retain legal counsel at the Presbytery's expense."

Presbytery appointed the individually named Plaintiffs herein as members of Anna Administrative Commission II (Pl. Exh. 38, pp. 9-10).

22. Only one member of the session of the Anna Church was present at the Presbytery meeting of November 20, 1980 and he endorsed the recommendations of Anna Administrative Commission I (Pl. Exh. 38).

23. The appointment by Presbytery of Anna Administrative Commission II on November 20, 1980, included the granting to that Commission of all powers of Session. Those powers include full control over the use of the property of the Anna Church.[12] (Tr. p. 59)

24. The Anna Church was notified of the decision and action of Presbytery in appointing the Anna Administrative Commission II to replace the Session of the Anna Church by letter from the Stated Clerk of Presbytery dated November 22, 1980 (Pl. Exh. 35; Tr. pp. 169-170).

25. No appeal or review of the decision of Presbytery to replace the Session of the Anna Church, pursuant to the Book of Order[13] was undertaken or attempted by the Anna Church or

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[12] Book of Order, Form of Government, Chapter XI, ¶41.07 provides:

> "Subject to the provisions of the Directory for Worship, the session shall have and exercise exclusive authority over the worship of the congregation, including the musical service; and shall determine the times and places of preaching the Word and all other religious services. *It shall also have exclusive authority over the uses to which the church building and properties may be put,* but may temporarily delegate the determination of such uses, subject always to the superior authority and direction of the session." (Emphasis added)

[13] Book of Order, Form of Government, Chapter XIII, ¶43.05 provides that the Synod has appeal jurisdiction over all appeals, complaints and references brought before it from Presbytery, and to decide finally in such cases all questions that do not affect the doctrine or the interpretation of the constitution of the Church. Part III of the

any of the Defendants, and such decision became final (Tr. pp. 66, 98-100 and 228-229).

26. The Defendants in this cause and the dissident members of the congregation of the Anna Church have continued to use and control the property and assets as they existed on October 26, 1980, to the exclusion of Plaintiffs and the loyalist members of the congregation who adhered to the form of government of UPCUSA and contrary to the constitutional power of authority of the Plaintiffs acting through the Anna Administrative Commission II.[14]

27. Since November 20, 1980, Anna Administrative Commission II has carried out all of the functions of the Session of the First United Presbyterian Church of Anna, Illinois, a particular church of UPCUSA. It has organized a search committee, presented a candidate to Presbytery and called and the Presbytery has installed a Pastor. The Anna Administrative Commission II has continued to oversee the ongoing mission and ministry of the Church (Tr. p. 202). Because the loyal

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Book of Order (the Book of Church Discipline), Chapter VI, ¶86.01 et seq. sets forth the procedure for appeals. Chapter V of the Form of Government (Part II of the Book of Order), ¶35.01, dealing with church government, provides that appeals may be carried from lower to higher judicatories, till they be finally decided by the collected wisdom and united voice of the whole Church (see also Tr. p. 66).

[14] Part III, (Form of Government) of the Book of Order, Chapter XI, ¶41.07 (quoted in Footnote 12) provides that the session shall have exclusive authority over the uses to which the church buildings and properties may be put.

Chapter XI, ¶41.15 (quoted in Footnote 8) of the Form of Government provides that whenever the presbytery shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint a commission with the full power of a session and that this commission shall take the place of the existing session which shall cease to act until such time as the presbytery shall otherwise direct.

members of the Anna Church desire to worship with a pastor who is ordained by the UPCUSA in services that are in accordance with the principles and doctrine of the united church, Plaintiffs have provided temporary facilities on Washington Street in Anna, Illinois, for the purposes of conducting religious services in accordance with the beliefs and religious doctrine of the loyalist group (Tr. pp. 209-211).

Following the events described above Plaintiffs instituted this action seeking a decree that all property and assets of the Anna Church be turned over to the Anna Administrative Commission II and that Defendants be enjoined from interfering in any way with the Commission's control and use of such property.

28. The Anna Church is the owner of certain real estate situated in Anna, Illinois, more particularly described as follows:

(For description see Appendix pp. A-16 - 17)

The Anna Church is also the owner of certain personal property, including books of worship, hymnals, books, records, furniture and furnishings, bank accounts and other personal property.

29. This action is brought to obtain a declaration of rights and legal relations under the provisions of Section 57.1 of the Illinois Civil Practice Act (Ill. Rev. Stat., 1979, ch. 110, Sec. 57.1) for the purpose of determining questions in actual controversy between the parties hereto under the facts and circumstances hereinabove set forth.

30. By reason of the premises and in the event Defendants are not enjoined by this Court, Plaintiffs will sustain great and irreparable loss, injury and damage for which they have no adequate remedy at law.

The Appellate Court of Illinois, Fifth District, affirmed the Trial Court's Judgment which approved Presbytery's removal

and replacement of the Session of the Anna Church, but reversed the decretal portion of the Trial Court's judgment granting Petitioners the relief naturally and consequentially flowing from the Session removal, notwithstanding the fact that Respondents have fully complied with the Trial Court's orders following denial of a stay order. Petitioners are in possession and control of the assets of the Anna Church.

REASONS FOR GRANTING THE WRIT

In the decision of the Appellate Court here appealed from, the intermediate appellate court ignored the mandate of Illinois' highest court, the Illinois Supreme Court, which established the State policy of following the compulsory deference principle in dealing with church property disputes. That doctrine was enunciated in the 1976 case of *Lowe v. First Presbyterian Church,* 56 Ill.2d 404, 308 N.E.2d 801, cert. den. 419 U.S. 875. The *Lowe* case was in full accord with *Watson v. Jones* (1872), 80 U.S. (13 Wall.) 679, and with the later case of *Jones v. Wolf* (1979), 443 U.S. 595.

In its opinion of November 9, 1984, the Appellate Court affirmed the Trial Court judgment with respect to Petitioners' removal and replacement of the Anna Church Session and reversed those portions of the Trial Court judgment affording Petitioners the declaratory judgment relief which they had prayed for and resulting from the removal and replacement of the Session by a strained misapplication of the "neutral principles" doctrine. Meaningful relief under this declaratory judgment action means much more than a simple approval by the Court of the removal and replacement of the Session of the Anna Church by Presbytery in accordance with the denominational constitution. Petitioners are entitled to a declaration of *the rights and legal relations* of and between Petitioners and Respondents. This, the Trial Court granted in its final judgment, but the Appellate Court reversed that portion of the Judgment Order.

The Appellate Court decision here is seriously flawed by that Court's error in ignoring what the U.S. Supreme Court has said is necessary for "neutral principles" to apply. The decision denies UPCUSA the free exercise of religion as provided in its denominational constitution, and is directly contrary to this Court's decisions in *Serbian Eastern Orthodox Diocese v. Milivojecvich,* 426 U.S. 696 (1976), *Kedroff v. Saint Nicholas Cathedral,* 344 U.S. 94 (1952), *Kreshik v. Saint Nicholas Cathedral,* 363 U.S. 190 (1960), and *Jones v. Wolf,* 443 U.S. 595, (1979).

In its consideration of whether or not the "neutral principles" concept could be applied the Appellate Court ignored the factors which this Court has said, in *Jones v. Wolf,* should be given weight, including the denomination's constitutional provisions relating to (a) the powers of the replaced Session in relation to the property and assets of the local church, (b) the control provisions relating to the sale of property, and (c) the adherence of the corporation holding title to the property to the constitutional requirement that the corporation do so in accordance with the constitution. Also a factor which should have been considered are the provisions of the local church corporation's Charter and By Laws, which in this case clearly set forth adherence to the denominational constitution provisions.

In 1872, this Court, in *Watson v. Jones,* 80 U.S. (13 Wall.) 679 (1872), enunciated as a matter of federal common law a broad doctrine of judicial deference to the internal decision-making processes of a church denomination, based upon the denomination's established "polity" or system of government. The Supreme Court distinguished between two types of denominational organizations as the basis of its analysis of church property disputes. One class of cases is presented,

> ...when the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority. 80 U.S. at 722.

The Court stated that in this class of cases, if the principle of majority rule was the established procedure in the congregation, then the vote of the majority would govern the use of the property. 80 U.S. at 725.

The other class of cases described by the Court is presented,

> ...where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization. 80 U.S. at 722.

Watson v. Jones involved a property dispute within the Presbyterian Church in the U.S.A., the predecessor of the UP-CUSA. The Court found that the Presbyterian Church was in the latter class of cases and, in deferring to the decision of the dispute reached by the denominational judicatories, stated:

> ...but in cases of this character we are bound to look at the fact that the local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its orders and judgments. There are in the Presbyterian system of ecclesiastical government, in regular succession, the presbytery over the session or local church, the synod over the presbytery, and the General Assembly over all. These are called, in the language of the church organs, "judicatories," and they entertain appeals from the decisions of those below, and prescribe corrective measures in other cases.
>
> In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of

> discipline, or faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them. 80 U.S. at 726-27.[15]

Forty-two years later, in *Shepard v. Barkley* (1918), 247 U.S. 1, involving a property dispute within the predecessor of the UP-CUSA, the Court noted the structure and decision-making process of the denomination and quieted title to the property in the denomination.

After the limitations of the religion clauses of the First Amendment became applicable to the states in the 1940's, the Supreme Court reaffirmed the deference principle and implied that it had constitutional status under the free exercise clause. *Kedroff v. Saint Nicholas Cathedral,* 344 U.S. 94 (1952); *Kreshik v. Saint Nicholas Cathedral,* 363 U.S. 190 (1960).

In *dictum* in *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440 (1969), however, the Supreme Court introduced the concept that states *could,* without violating the First Amendment, apply certain unspecified "neutral principles of law, developed for use in all property disputes" to resolve church disputes. The *Hull* decision unsettled a century of case law concerning what states *must* do and what they *can* do in resolving church property disputes.

Some clarification of what states must do and what they can do came in *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426

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[15] The rule of *Watson v. Jones* has long been the law in many states. *See, e.g., Sutter v. Trustees of the First Reformed Dutch Church,* 42 Pa. 503 (1862); *Canavaro v. Brothers,* 326 Pa. 76; 191 A. 140 (1937); *Mills v. Baldwin,* 362 So.2d 2 (Fla. 1978); cert. den. 443 U.S. 914; *Protestant Episcopal Church v. Graves,* 83 N.J. 572; 417 A.2d 19 (1980); cert. den. Jan. 26, 1981; *Tea v. Protestant Episcopal Church,* 610 P.2d 182 (Nev. 1980).

U.S. 696 (1976). In *Serbian,* the Court held that in certain circumstances, decisions of church judicatories concerning internal administration and polity bind civil courts even when property disputes are affected. The property question there arose in the same manner that it arises in the present case, *i.e.* who is the proper authority to control the church government of the subordinate body and consequently its property. In answering this question the Court stated:

> Resolutions of the religious disputes at issue here affects the control of church property in addition to the structure and administration of the American-Canadian Diocese. This is because the Diocesan Bishop controls respondent Monastery of St. Sava and is the principal officer of respondent property holding corporations. Resolution of the religious dispute over Dionisije's defrockment therefore determined control of the property. Thus, this case essentially involved not a church property dispute, but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals. Even when rival church factions seek resolution of a church property dispute in the civil courts there is substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. 426 U.S. at 709.

In two earlier cases, *Kedroff v. Saint Nicholas Cathedral,* 344 U.S. 94 (1952), and *Kreshik v. Saint Nicholas Cathedral,* 363 U.S. 190 (1960), this Court had reversed decisions of the Court of Appeals of New York where the issue was which prelate was entitled to the use and occupancy of a cathedral in New York -the prelate appointed by the longstanding Moscow-based hierarchy or the prelate appointed by a competing hierarchy more recently established in North America. This Court ruled that the states may not by legislation or by common law decision transfer hierarchical control of a denomination, and the attendant control over church property, from one group to another.

The result of these decisions was to leave control of the cathedral under the Moscow-based hierarchy.

The *Serbian, Kedroff,* and *Kreshik* decisions rely on the well-established doctrine of judicial deference to the internal decision-making of hierarchical religious denominations. The Supreme Court's most recent decision involving church property disputes came in *Jones v. Wolf,* 443 U.S. 595 (1979) in a case involving the attempted withdrawal of the members of a local church from the Presbyterian Church in the United States.[16] Even under the "neutral principles" concept approved by the Court, the express provisions in the constitution of the UPCUSA—The Book of Order—determine who should control the property of First United Presbyterian Church of Anna. Because the express provisions of The Book of Order place the Presbytery's Administrative Commission in control of the property, the Trial Corut was correct in granting Plaintiffs the relief sought in this litigation and the Appellate Court was in error in reversing that portion of the Trial Court judgment.

Jones v. Wolf was a five-to-four decision in which the majority held that states *must* decide church property disputes involving hierarchical or connectional churches in favor of the denomination *if the denominational constitution,* the *local church charter* or the deed to the property specifies that the denomination is to control the property. If none of these documents specifies that the denomination controls the property in the event of a dispute, the state *may* decide the dispute either on the basis of "neutral principles of law" or by giving

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[16] The Presbyterian Church in the United States, known as the Southern Church, was similar in structure to UPCUSA, but the constitution of the Presbyterian Church in the United States *did not contain* the provisions dealing with property that are found in The Book of Order of the UPCUSA. Subsequent to this litigation there has been a reunion of the Northern and Southern Churches, thus reversing the split which occurred during the Civil War. The successor church, since the reunion in 1983 is now known as "Presbyterian Church (U.S.A.).

deference to the decisions reached by church judicatories. 443 U.S. at 595-610. The minority argued that only the deference rule of decision is constitutionally permissible. 443 U.S. at 610-21. Since the constitution of the UPCUSA specifies that the denomination through its subordinate judicatories should control the property of First United Presbyterian Church of Anna, the Trial Court correctly granted Plaintiffs the relief sought in this case.

The fact that the UPCUSA (and its predecessors) are classified as a hierarchical or connectional church, as those terms are used by this Court and the Courts of Illinois, is beyond dispute. *See, e.g., Watson v. Jones,* 443 U.S. 595; *Lowe v. First Presbyterian Church,* 56 Ill.2d 404; 308 N.E.2d 801. The fundamental principles underlying the unity of all part of the UPCUSA and the ascending structure of the authority and decision-making jurisdiction of church judicatories are set out in the Book of Order.

The Book of Order applies these principles and procedures to questions of property in numerous ways. Part II, Chapter XX-XII, ¶62.04 provides that if the law of the state permits, each local church "shall" form a corporation to handle property

> ...in such manner as may be directed by the session of the particular church from time to time *and according to this Constitution.* (Emphasis added)

Pursuant to this provision, the Anna Church did form a corporation to hold its property. The corporation's charter provided (before the actions of Defendants to amend it):

> "The purpose or purposes for which the corporation is organized are: To constitute and organize the members of the corporation as a church, to covenant and agree to walk together as disciples of Jesus Christ in a church relation according to the provisions of the Constitution of the United Presbyterian Church in the United States of America, and

to exercise the government of said Church under some certain and definite form."

(Pl. Exh. 23)

The By-Laws of the corporation provided:

"The corporation, being a particular church of the United Presbyterian Church in the United States of America, is subject to each and every provision contained in The Constitution thereof both for civil and ecclesiastical purposes, except that, in the event of any conflict between civil and ecclesiastical law, with regard to civil matters, the corporation is subject to the "General Not For Profit Corporation Act" of the State of Illinois, Illinois Revised Statutes, Chapter 32, Section 163a, et seq., and these By-Laws shall be interpreted accordingly."

(Pl. Exh. 24)

Many aspects of the control of the property within the denomination are delegated to the Presybteries. Part II, Chapter XXXII, ¶62.12 provides:

A particular church shall not sell, mortgage or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presybtery transmitted through the session of the particular church.

A particular church shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presybtery transmitted through the session of the particular church.

The Book of Order contains two alternative means by which the denomination can assert and maintain its control over the property of a particular church in the event of a dispute. The first means is provided in Part II, Chapter XXXII, ¶62.11, which provides that upon the dissolution of a particular church by the

particular Presbytery and/or a determination by the Presbytery that the particular church has abandoned its work as a particular church within UPCUSA, all property of the particular church is controlled by the Presbytery to be used as it sees fit. Presbytery has not yet adopted this procedure, in connection with the Anna Church, but it could do so at any time.

Instead, Petitioners here elected to follow the less drastic alternative procedures set forth in Part II, Chapter XI, ¶41.15 and 41.07. These sections authorize and empower the Presbytery to elect an Administrative Commission to replace the session of a particular church. The Administrative Commission has the full power of a session and exercises control over the local church, including control of the local church property. Part II, Chapter XI, ¶41.15 provides:

> Whenever, after thorough investigation, and after full opportunity to be heard has been accorded to the session in question, the presbytery of jurisdiction shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint a commission composed of ministers and ruling elders, *with the full power of a session. This commission shall take the place of the existing session,* if any, which shall cease to act until such time as the presbytery shall otherwise direct. (Emphasis added)

Part II, Chapter XI, ¶41.07 provides:

> Subject to the provisions of the Directory for Worship, the session shall have and exercise exclusive authority over the worship of the congregation, including the musical service; and shall determine the times and places of preaching the Word and all other religious services. *It shall also have exclusive authority over the uses to which the church buildings and properties may be put,* but may temporarily delegate the determination of such uses, subject always to the superior authority and direction of the session. (Emphasis added)

These procedures were followed by Presbytery in its dealings with the Anna Church. An investigation was conducted and the Session of the Anna Church was given an opportunity to be heard. The Presbytery then determined that the Session of the Anna Church was unwilling to manage the affairs of the church in accordance with The Book of Order and voted to replace the Session with the Anna Administrative Commission II elected by the Presbytery. In taking over all of the powers of the Session, the Administrative Commission also took over control of the local church property. It is only because of the improper acts of the Respondents that the Presbytery through the Anna Administrative Commission II was, until the Trial Court decision, unable to exercise control over the use of that property.

The Appellate Court reversed the Trial Court's declaration of the nullity of the Anna Church's actions, withdrawal and severance, holding that to make such a ruling impermissibly intrudes into church polity (Appendix p. A-31). Having so held, the Appellate Court in the first instance should have deferred to Presbytery's determination and affirmed the decision of the Trial Court granting Petitioners the relief prayed and enforcing the authority of the Administrative Commission. In applying the "neutral principles" concept, the Appellate Court refused to consider the provision of the denominational constitution granting the Session "exclusive authority over the uses to which the church building and properties may be put" (Book of Order, Form of Government, Chapter XI, marginal reference ¶41.07) on the grounds that any inquiry into the meaning of that provision would entail an unconstitutional inquiry into doctrine and polity. This, in spite of the plain language of that section when read in connection with the sections granting the session exclusive authority over church property, is to place the Presbytery, through its Administrative Commission, in control of the local property where, as here, the Presbytery has acted to replace the Session.

The result is a decision which denies Presbytery and the Administrative Commission authority expressly granted in the denominational constitution.

Having chosen to apply the "neutral principles" concept, the Appellate Court constitutionally erred when it failed, as required by the First Amendment, to give effect, as stated in the majority opinion in *Jones v. Wolf,* to "the result indicated" by recognizing and enforcing Presbytery's authority over the property at issue.

This denies UPCUSA the free exercise of religion guaranteed by the First Amendment which this Court has held encompasses the power of hierarchical religious denominations "to decide for themselves, free from state interference, matters of church governments as well as those of faith and doctrine," *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 721-722 (1976). This is contrary to the First Amendment principle upheld by this Court in the *Serbian, Kedroff,* and *Kreshik* decisions, and in both the majority and dissenting opinions in *Jones v. Wolf.*

The Appellate Court decision and opinion here was forecast by Mr. Justice Powell in his dissent (joined by Chief Justice Burger, and Justices Stewart and White) of *Jones v. Wolf* (see 443 U.S. 611-613, 99A S.Ct. 3029-3030). He predicted that the neutral principles approach would inevitably increase the involvement of civil courts in church controversies and that the civil courts in their attempted application of that doctrine would exclude from consideration so many provisions of church constitutions dealing with church polity that the result would be totally contrary to the form of church government chosen by the hierarchical denomination.

CONCLUSION

The constitutional error of the Appellate Court of Illinois, Fifth District should be corrected. Other church cases presently in the courts of Illinois and elsewhere and those that follow should not be influenced by this erroneous decision. We pray that the Court will grant certiorari and consolidate this case with the Pennsylvania case involving the same issues entitled Presbytery of *Beaver-Butler, UPCUSA, et al. v. Middlesex Presbyterian Church, et al.*, in which a Petition for Writ of Certiorari is being filed almost contemporaneously herewith. Upon the granting of the Writ of Certiorari, we pray that the Court reverse the decision of the Appellate Court, and remand the case with directions to affirm the Trial Court judgment in its entirety.

Respectfully submitted,

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APPENDIX

APPENDIX A

IN THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT OF ILLINOIS
UNION COUNTY

No. 81-MR-5

Byron W. York, Joseph Van Roekel, Alan V. Pareis, Helen Westberg, Joe E. Logsdon, III, and Peyton Kunce, Individually and as Members of The Anna Administrative Commission II of the Southeastern Presbyterian Church of the United States of America, on behalf of said Anna Administrative Commission II and on behalf of the United Presbyterian Church of the United States of America and Southeastern Illinois Presbytery of the United Presbyterian Church of the United States of America,

Plaintiffs,

v.

The First Presbyterian Church of Anna, Illinois, an Illinois Not-For-Profit Corporation, Anna Presbyterian Foundation, an Illinois Not-For-Profit Corporation, and Clair S. Albright, Helen Owens, Charlotte Rife, John Lutz, Lisa Wells, Jane Rader, Joel Meller, Norman Hicham and Joyce Verble, Individually and as Members of the Session of The First United Presbyterian Church of Anna, Illinois,

Defendants.

JUDGMENT ORDER

This cause coming on for bench trial, the Court, having considered the evidence and arguments and briefs of counsel, being fully advised in the premises, finds as follows:

When used hereafter, the following unqualified terms shall precisely be defined as follows:

UPCUSA	United Presbyterian Church in the United States of America, and unincorporated religious association.
Synod	The Synod of Lincoln Trail of UPCUSA
Presbytery	The Southeastern Illinois Presbytery of the United Presbyterian Church in the United States of America, an unincorporated religious association.
Anna Church	The First United Presbyterian Church of Ann, Illinois, an unincorporated religious association, and a particular church (as defined in Form of Government, Book of Order, Chapter IV, page [marginal reference] 34.01 et seq.) of UPCUSA as it existed prior to October 26, 1980.
Anna Church Corporation	The First Presbyterian Church of Anna, Illinois, organized as an Illinois not-for-profit corporation, and prior to its change of name on October 27, 1980, known as The First United Presbyterian Church of Anna, Illinois, an Illinois not-for-profit corporporation.
Anna Presbyterian Foundation	An Illinois not-for-profit corporation organized and existing since October 27, 1980.
Book of Order	The 1980-81 Edition of the Book of Order consisting of Part II of the Constitution of UPCUSA, published by the Office of the General Assembly of UPCUSA.
Anna Administrative Commission I	The investigative commission appointed on November 13, 1980 by Presbytery.

Anna Administrative Commission II	The commission consisting of the individually named plaintiffs appointed by Presbytery on November 20, 1980, to replace the Session of the Anna church under the provisions of Chapter XI, Section 15 (¶41.15) of Form of Government in the Book of Order.
Judicatory	The governing body of the united parts of UPCUSA consisting, in ascending order, of sessions, presbyteries, synods and a general assembly as set forth in Chapter V, "Of Church Government", page (marginal reference) 35.01 et seq. of Form of Government, Book of Order.
Session	The ruling judicatory of a particular church of UPCUSA as defined, and with the powers and jurisdiction set forth, in Form of Government, Book of Order, Chapter XI, page (marginal reference) 41.01 to 41.25.
Hierarchal or Hierarchical	Government church structure consisting of a series of ascending bodies called judicatories commencing at the lowest level with a Session, then Presbytery, then Synod, and finally, at the highest level, the General Assembly, with each judicatory having control of those below it, as defined and applied by the courts, particularly the Illinois Supreme Court in *Lowe v. First Presbyterian Church of Forest Park,* 1974, 56 Ill.2d 404, 308 N.E.2d 801, 805 and by the United States Supreme Court in *Presbyterian Church v. Mary E. B. Hull Memorial Presb. Church,* 1969, 393 U.S. 440, 442, 89 S.Ct. 601, 602.

1. The United Presbyterian Church in the United States of America ("UPCUSA") is an unincorporated religious union of particular Presbyterian churches, founded in 1706, and is organized and governed in accordance with the constitution of the UPCUSA which sets forth the form of government and rules of discipline of the church.[1] (Tr. pp. 17-19, 23, 119-120)

2. The Book of Order (Pl. Exh. 1) sets forth in Part II, Form of Government, the "system of union" which UPCUSA has adopted;[2] it describes a local or particular church as those persons associated together for worship and submitting to the form of government;[3] it specifies that all parts of the denomination comprise one Church;[4] and it provides that "The General

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[1] The entire constitution of UPCUSA consists of the Book of confessions and the Book of Order; the Book of Order is divided into three parts consisting of the Directory for the Worship of God, the Form of Government and the Book of Church Discipline.

[2] Chapter 1, ¶ (marginal reference) 31.00

[3] Chapter IV, ¶34.01

[4] Chapter V, ¶35.01 which provides:

> "The radical* principles of Presbyterian Church government and discipline are: that the several different congregations of believers, taken collectively, constitute one Church of Christ, called emphatically the Church; that a larger part of the Church, or a representation of it, should govern a smaller, or determine matters of controversy which arise therein; that, in like manner, a representation of the whole should govern and determine in regard to every part, and to all the parts united: that is, that a majority shall govern; and consequently that appeals* may be carried from lower to higher judicatories, till they be finally decided by the collected wisdom and the united voice of the whole Church. For these principles and this procedure, the example of the apostles and the practice of the primitive Church are considered as authority.
>
> *The text of this section was adopted circa 1793 by the General Assembly of the Presbyterian Church. In this quotation the

Assembly is the highest judicatory of this Church and shall represent in one body all of the particular churches thereof".[5] (Tr. pp. 17-19)

3. By the provisions of the Constitution each particular church is immediately governed by a judicatory known as a "Session", and the particular churches are organized within the UPCUSA into district groups, each under the authority and jurisdiction of a superior judicatory known as a "Presbytery", composed of ministers and elders representing all the particular churches within the bounds of the Presbytery. The Constitution further provides for judicatories superior to the Presbyteries known as "Synods", and for a supreme judicatory known as the "General Assembly of the United Presbyterian Church in the United States of America".[6] (Tr. pp. 17-19)

4. The Constitution defines the powers, duties and composition of the various judicatories, sets forth the methods of determining questions of faith, government, and discipline, arising within the church, and provides a procedure whereby any person or persons aggrieved or complaining of any matter in the church may have his or their charge or complaint heard before the constituted courts of the church, and may carry appeals from the lower to the higher judicatories.[7]

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word 'radical' is used in its primary meaning of 'fundamental and basic,' and the word 'appeals' is used in a general sense rather than with reference to a case involved in judicial process."

[5] Chapter XIV, ¶44.01.

[6] The role and functions of the Session, Presbytery, Synod and General Assembly are outlined in Part II, Chapter XI, XII, XIII and XIV, respectively, of the Book of Order

[7] Part III of the Book of Order (the Book of Church Discipline) contains the provisions which set forth the methods of determining questions and controversies within the denomination.

5. Plaintiff, the Southeastern Illinois Presbytery of UPCUSA (Presbytery) is one such superior judicatory, having jurisdiction over the various particular churches as defined by The Book of Order, Part II (Form of Government), Chapter IV, ¶34.01, located within its geographical area including the Anna Church.

6. The individual Plaintiffs are members of "Anna Administrative Commission II" elected by Presbytery pursuant to The Book of Order, Form of Government, Chapter XI, ¶41.15, to replace and function as the Session of the Anna Church.[8] (Pl. Exh. 38; Tr. P. 201)

7. The UPCUSA Constitution provides that the First United Presbyterian Church of Anna, Illinois (the Anna Church) is an unincorporated religious association and ecclesiastical congregation which is separate and distinct from the corporation with the same name (Book of Order, Part II, Chapter XXXII, ¶62.04; Tr. pp. 24-26)

8. Defendant, The First Presbyterian Church of Anna, Illinois, an Illinois not-for-profit corporation, which was known as the First United Presbyterian Church of Anna, Illinois prior to October 27, 1980, when its name was changed, is a corporation whose original purpose was to hold title to both real and personal property for the unincorporated Anna Church, pursuant to the express provisions of The Book of Order, Form of Government.[9]

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[8] Chapter XI, Section 41.15 of The Book of Order provides:

> "Whenever, after a thorough investigation, and after full opportunity to be heard has been accorded to the session in question, the presbytery of jurisdiction shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint a commission composed of ministers and ruling elders, *with the full power of a session. This commission shall take the place of the existing session,* if any, which shall cease to act until such time as the presbytery shall otherwise direct." (Emphasis added)

[9] Chapter XXXII, ¶62.04

9. The individual Defendants are the Pastor and Session members (elders) of the Anna Church as of October 26, 1980 who concurred in, voted in favor of and condoned the action of a majority of the members of the congregation of the Anna Church in the actions it took in attempting to sever the Anna Church from UPCUSA.

10. The Anna Church and its congregation at Anna, Illinois, was organized in 1866 as part of the Presbyterian Church in the U.S.A. which ultimately became, through merger, a part of UPCUSA and at all times subsequent the Anna Church has been and is now a constituent part of UPCUSA (Pl. Exh. 4; Tr. pp. 30, 142).

11. The Alton Presbytery, in 1866, then a judicatory of the Presbyterian Church in the U.S.A., organized the Anna Church (Pl. Exh. 4; Exh. 8 and 8 A; Tr. p. 142).

12. In the years 1866 to and including October 28, 1980, the Anna Church acquired and the Anna Church Corporation holds title to all of the real estate described in ¶23 of the Amended Complaint and Plaintiffs' Exhibit 27 (Tr. p. 6-7), as well as certain personal property, including books of worship, hymnals, books, records, furniture and furnishings, bank account and other personal property, title to all of which is now vested in the Anna Presbyterian Foundation, an Illinois not-for-profit corporation organized and existing since October 27, 1980 (see Defendants' Answer to ¶23 of the Amended Complaint).

13. From the time of its organization in 1866 until October 26, 1980, the Anna Church was and publicly acknowledged itself to be a constituent part of and a particular church in the UPCUSA, the Alton Presbytery and its successor, the Southeastern Illinois Presbytery of UPCUSA as evidenced by, *inter alia,* the following:

> (a) The Articles of Incorporation of the Anna Church Corporation, then known as The First Presbyterian Church of Anna, Illinois, as they existed on October 26, 1980, provided, in Article 5, as follows:

"The purpose or purposes for which the corporation is organized are: To constitute and organize the members of the corporation as a church, to covenant and agree to walk together as disciples of Jesus Christ in a church relation according to the provisions of the constitution of The United Presbyterian Church in the United States of America and to exercise the government of said church under some certain and definite form."

(Pl. Exh. 23 and 24)

(b) The By-Laws of the Anna Church Corporation provided, as of October 26, 1980, as follows:

"Article III, Section 2.

The office of president of the corporation shall be held by the same person who is Pastor Of The Congregation who shall be elected and chosen in accordance with the Constitution of the United Presbyterian Church in the United States of America."

"Article V, Section 1.

The corporation shall have one class of members, namely, those person who have entered into active membership in a church relation according to the provisions of The Constitution of The United Presbyterian Church in the United States of America as a particular church in the City of Anna, County of Union and State of Illinois, under and by authority of the Presbytery of Southeastern Illinois, or its successors in interest."

"Article IV, Section 6.

The Pastor shall preside at each meeting of the congregation provided that in the event that the pulpit is vacant, the Pastor is not present, or the Pastor and

Session agree that the subject matter could be discussed make it more appropriate, then some other minister authorized by the Presbytery may be invited by the Session to preside at any such meeting."

"Article IX, Section 1.

The corporation, being a particular church of the United Presbyterian Church in the United States of America, is subject to each and every provision contained in the Constitution thereof both for civil and ecclesiastical purposes, except that in the event of any conflict between civil and ecclesiastical law, with regard to civil matters, the corporation is subject to the "General not-for-profit Corporation Act" of the State of Illinois, Illinois Revised Statutes, Chapter 32, Sec. 163(a) et seq., and these by-laws shall be interpreted accordingly."

"Article IX, Section 2.

To the extent not herein provided, all matters pertaining to the internal affairs of the corporation, including the rules, procedure, and any other matters pertaining to, for the nomination, election, and ordaining of officers and members of the Session, and the calling, holding and conduct of meetings, shall be in accordance with the Constitution of the United Presbyterian Church in the United States of America, as amended from time to time, except to the extent that such constitution does not extend to certain matters of order, in which case Roberts Rules of Order shall govern."

"Article IX, Section 3.

Any term used in these by-laws and not defined herein or in said "General not-for-profit Corporation Act", shall be defined or interpreted by, or by reference to the Constitution of the United

Presbyterian Church in the United States of America, which by this reference thereto is hereby incorporated herein as a part hereof."

(Pl. Exh. 24)

(c) The Anna Church obtained its pastor pursuant to the Constitution of UPCUSA and subject to the approval of Presbytery (Pl. Exh. 8; Tr. pp. 145-147).

(d) The Anna Church pursuant to the provisions of the UPCUSA Constitution,[10] requested and obtained permission from Presbytery in matters relating to the purchase, sale or mortgage of real estate (Pl. Exhs. 9, 10, 11, 12, 13, 14, 15, 16, 17; Tr. pp. 148-157).

(e) Defendant, Clair S. Albright, by his vows at his installation as Pastor of the Anna Church endorsed the government of the UPCUSA and vowed that he would honor its discipline; he promised to further the peace, unity and purity of the UPCUSA Church and that he would be a faithful minister, active in government and discipline in serving in the Courts of the Church and in his ministry (Book of Order, Form of Government, Chapter XX, ¶50.12 through 50.129; Tr. pp. 51-55 and 467-468).[11]

(f) Each of the individually named Defendants who were ruling elders and members of the Session of the Anna Church as of October 26, 1980, as part of his vows endors-

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[10] Book of Order, Form of Government, Chapter XXXII, ¶¶62.11 and 62.12

[11] The installation vows or obligations of a pastor are contained in the Book of Order, Part II (Form of Government), Chapter XX, ¶¶50.12 - 50.129; they are identical to the vows and undertakings of a Minister upon ordination, found in Chapter XIX, ¶¶49.041 to 49.049 (Tr. pp. 51-54).

ed the government of UPCUSA and vowed he would honor its discipline (Tr. pp. 54-56; Book of Order, Form of Government, Chapter XVII, ¶47.08 to 47.089).

14. On October 26, 1980, a meeting of the congregation of the Anna Church, which was also designated as a meeting of the members of the Anna Church Corporation, was held, the stated purpose of which was to consider proposed amendments to the Articles of Incorporation and the by-laws of the church corporation. Motions were made and declared passed at said meeting adopting the proposed amendments which deleted all references in the Articles of Incorporation to the word "united" in the name of the corporation and deleted from the purposes of the corporation all references to the organization, covenant and agreements that the Anna Church walk together in a church relation according to the provisions of the Constitution of UPCUSA and to exercise the government of said church under certain and definite form. Said proposed amendments further provided that the Anna Church exist in an autonomous congregation separate and independent from and of any denomination. That meeting was presided over by the Pastor of the Anna Church, Clair S. Albright. (Pl. Exh. 24; Def. Exh. G).

15. On October 27, 1980, Defendants organized the Anna Presbyterian Foundation to which was conveyed on October 28, 1980, all of the real estate of the Anna Church (Pl. Exh. 26, 27; Tr. pp. 6-7).

16. Thereafter, Defendant, Clair S. Albright, the Pastor of the Anna Church, by letter requested that his name be removed from the rolls of Presbytery as an ordained minister (Tr. pp. 193 and 475).

17. Based upon the report of the Ministerial Relations Committee of Presbytery the General Council of Presbytery recommended to Presbytery at its stated meeting held on November 13, 1980, that Presbytery appoint an administrative commission to investigate the reasons for disunity in the Anna Church and to report its findings and recommendations to Presbytery at its

adjourned meeting on November 20, 1980 (Pl. Exh. 32; Tr. p. 160). The minutes of the stated meeting of Presbytery held on November 13, 1980, show on their face that the recommendations of the General Council were adopted by Presbytery. That administrative commission for investigation purposes referred to as Anna Administrative Commission I was formed at that time consisting of the individually named Plaintiffs (Tr. p. 194).

18. Anna Administrative Commission I met with the Session of the Anna Church on November 15, 1980, and made an investigation of the actions of the individually named Defendants herein and of the congregation of the Anna Church (Tr. pp. 195-200; see also the Report of the Anna Administrative Commission contained, in full, on pp. 3 to 9 of Pl. Exh. 38).

19. By letter dated November 14, 1980, addressed to Joyce Verble, Clerk of Session of the Anna Church, and sent by Certified U.S. Mail, Return Receipt Requested, the Session of the Anna Church was advised of the appointment by Presbytery on November 13, 1980, of Anna Administrative Commission I with instructions to report its findings and recommendations to Presbytery at an adjourned meeting on November 20, 1980. Because of the possible recommendation of removal of the Session of the Anna Church at the November 20 adjourned meeting, the Session was by such notice invited and encouraged to be present and to participate in a hearing on such recommendations. The return receipt signed by Joyce Verble indicates that this notice was received by her as Stated Clerk of Session of the Anna Church on November 15, 1980. (Pl. Exh. 33; Tr. pp. 166-169 and 199-200) Plaintiffs' Exhibit 33 also shows on its face that a copy was sent to Defendant, Clair S. Albright.

20. The Anna Administrative Commission I submitted its written report which appears, in full, in the Minutes of the Adjourned Meeting of Presbytery held on November 20, 1980, and which is in evidence as Plaintiffs' Exhibit 38. Following a detailed recitation of the activities of Anna Administrative

Commission I, the Commission reported its conclusion as follows:

> "After a thorough investigation, it is the opinion of the Commission that the Session of the First United Presbyterian Church of Anna had acted unwisely and that it had shown utter disregard of the Book of Order of the United Presbyterian Church in the U.S.A.; and for the peace and unity of members of the congregation to which it was called to minister. This Session had participated in the spreading of rumors and innuendos about its members, the congregation, the Presbytery, and other judicatories of the Church.
>
> It is the opinion of the Commission, that presently the Session is divided, it is divisive, and it is unable to perform its duties as outlined in Chapter XI of the Form of Government. We also feel that the Session is unable to comply with Section 35.02 of Chapter V of the Form of Government, in that it is not able to proceed with any recognized form in carrying out its duties."

(Pl. Exh. 38, P. 5)

21. Following debate, Presbytery adopted the recommendations of Anna Administrative Commission I as follows:

> "1. That the Session of the First United Presbyterian Church of Anna be notified of this report, and all actions taken by the Presbytery of Southeastern Illinois, meeting in adjourned session in Effingham, Illinois, on November 20, 1980;
>
> 2. That the Session of the First United Presbyterian Church of Anna be removed by reason stated in the Commission's report, in accordance with Chapter XI, Section 41.15, of the Form of Government, and that an administrative commission be appointed with full powers of the session;

3. That the Commission be authorized to retain legal counsel at the Presbytery's expense."

Presbytery appointed the individually named Plaintiffs herein as members of Anna Administrative Commission II (Pl. Exh. 38, pp. 9-10).

22. Only one member of the session of the Anna Church was present at the Presbytery meeting of November 20, 1980 and he endorsed the recommendations of Anna Administrative Commission I (Pl. Exh. 38).

23. The appointment by Presbytery of Anna Administrative Commission II on November 20, 1980, included the granting to that Commission of all powers of Session. Those powers include full control over the use of the property of the Anna Church.[12] (Tr. p. 59)

24. The Anna Church was notified of the decision and action of Presbytery in appointing the Anna Administrative Commission II to replace the Session of the Anna Church by letter from the Stated Clerk of Presbytery dated November 22, 1980 (Pl. Exh. 35; Tr. pp. 169-170).

25. No appeal or review of the decision of Presbytery to replace the Session of the Anna Church, pursuant to the Book of

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[12] Book of Order, Form of Government, Chapter XI, ¶41.07 provides:

> "Subject to the provisions of the Directory for Worship, the session shall have and exercise exclusive authority over the worship of the congregation, including the musical service; and shall determine the times and places of preaching the Word and all other religious services. *It shall also have exclusive authority over the uses to which the church building and properties may be put,* but may temporarily delegate the determination of such uses, subject always to the superior authority and direction of the session." (Emphasis added)

Order[13] was undertaken or attempted by the Anna Church or any of the Defendants, and such decision became final (Tr. pp. 66, 98-100 and 228-229).

26. The Defendants in this cause and the dissident members of the congregation of the Anna Church have continued to use and control the property and assets as they existed on October 26, 1980, to the exclusion of Plaintiffs and the loyalist members of the congregation who adhered to the form of government of UPCUSA and contrary to the constitutional power of authority of the Plaintiffs acting through the Anna Administrative Commission II.[14]

27. Since November 20, 1980, Anna Administrative Commission II has carried out all of the functions of the Session of the First United Presbyterian Church of Anna, Illinois, a particular

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[13] Book of Order, Form of Government, Chapter XIII, ¶43.05 provides that the Synod has appeal jurisdiction over all appeals, complaints and references brought before it from Presbytery, and to decide finally in such cases all questions that do not affect the doctrine or the interpretation of the constitution of the Church. Part III of the Book of Order (the Book of Church Discipline), Chapter VI, ¶86.01 et seq. sets forth the procedure for appeals. Chapter V of the Form of Government (Part II of the Book of Order), ¶35.01, dealing with church government, provides that appeals may be carried from lower to higher judicatories, till they be finally decided by the collected wisdom and united voice of the whole Church (see also Tr. p. 66).

[14] Part III, (Form of Government) of the Book of Order, Chapter XI, ¶41.07 (quoted in Footnote 12) provides that the session shall have exclusive authority over the uses to which the church buildings and properties may be put.

Chapter XI, ¶41.15 (quoted in Footnote 8) of the Form of Government provides that whenever the presbytery shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint a commission with the full power of a session and that this commission shall take the place of the existing session which shall cease to act until such time as the presbytery shall otherwise direct.

church of UPCUSA. It has organized a search committee, presented a candidate to Presbytery and called and the Presbytery has installed a Pastor. The Anna Administrative Commission II has continued to oversee the ongoing mission and ministry of the Church (Tr. p. 202). Because the loyal members of the Anna Church desire to worship with a pastor who is ordained by the UPCUSA in services that are in accordance with the principles and doctrine of the united church, Plaintiffs have provided temporary facilities on Washington Street in Anna, Illinois, for the purposes of conducting religious services in accordance with the beliefs and religious doctrine of the loyalist group (Tr. pp. 209-211).

Following the events described above Plaintiffs instituted this action seeking a decree that all property and assets of the Anna Church be turned over to the Anna Administrative Commission II and that Defendants be enjoined from interfering in any way with the Commission's control and use of such property.

28. The Anna Church is the owner of certain real estate situated in Anna, Illinois, more particularly described as follows:

> **Tract 1:** Lot number 10 in Winstead Davie's second addition to the town (now city) of Anna, Union County, Illinois.
>
> **Tract 2:** Lot number 11 in Winstead Davie's second addition to the town (now city) of Anna, Union County, Illinois.
>
> **Tract 3:** Lot numbered fourteen (14), except 6 feet of even width off of the north side thereof, in S.W. Wlaton's second addition to the City of Anna, situated in Union County, Illinois.
>
> **Tract 4:** Lot numbered twenty-two (22) and 44 feet off of the north side of lot number twenty-three (23) in S.A. Walton's second addition to the City of Anna, in the County of Union, and State of Illinois.

Tract 5: Part of the east part of the southeast quarter of the southeast quarter in section 9, township 12 south, range three west of the third principal meridian, containing 6.23 acres, more or less, situated in the County of Union and State of Illinois.

Tract 6: Part of the west part of the southeast quarter of the southwest quarter in section 10, township 12 south, range three west of the third principal meridian, containing 13.36 acres, more or less, situated in the County of Union and State of Illinois.

Tract 7: The sourth part of the southwest quarter in section 10, township 12 south, range three west of the third principal meridian, containing 22.30 acres, more or less, situated in the County of Union and State of Illinois.

Tract 8: The northwest quarter of section 16; the north 84.68 acres of fractional section 17, also described as follows: commencing at the northeast corner of said fractional section 17; running thence south 48 rods; thence west to the west line of said franctional section 17; thence in a northwesterly direction on the section line 48 rods, more or less, to the northwest corner of said fractional section 17, to the place of beginning, in township 12 south, range three west of the third principal meridian, in Union County, Illinois.

Tract 9: All that part of the north half of section 15 lying between the center lines of Running Lake Ditch and Clover Lake, more particularly described as follows: commencing at the northwest corner of said section 15; running thence east 2338 feet; thence south 11 degrees 30 minutes east, 1378 feet; thence south 27 degrees 30 minutes east, 1509 feet; to the south line of the north half of said section 15; thence west 2612 feet; thence north 14 degrees 35 minutes west, 1500 feet; thence north 31 degrees 45 minutes west, 1350 feet, to the place of beginning, in township 12 south,

range 3 west of the third principal meridian, in Union County, Illinois.

The Anna Church is also the owner of certain personal property, including books of worship, hymnals, books, records, furniture and furnishings, bank accounts and other personal property.

29. This action is brought to obtain a declaration of rights and legal relations under the provisions of Section 57.1 of the Illinois Civil Practice Act (Ill. Rev. Stat., 1979, ch. 110, Sec. 57.1) for the purpose of determining questions in actual controversy between the parties hereto under the facts and circumstances hereinabove set forth.

30. By reason of the premises and in the event Defendants are not enjoined by this Court, Plaintiffs will sustain great and irreparable loss, injury and damage for which they have no adequate remedy at law.

CONCLUSIONS OF LAW

1. UPCUSA is hierarchical in governmental form in that each judicatory has control of those below it. Each member Presbyterian Church is subject to the rules and directions of its Presbytery, Synod, and Assembly.

2. The Anna Church is a member of UPCUSA and therefore a part of that hierarchical structure. Since the original formation of the Anna Church in 1866, it has been an integral part of UPCUSA. Its membership implies consent to UPCUSA's form of government and its conduct during that period acknowledges UPCUSA's supremacy. Under that form of government, the Presbytery is authorized to remove the session of a local church and to appoint an administrative commission with full powers of the session, including full control over the use of the property of the local church.

3. "Whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." *Watson v. Jones,* 80 U.S. (13 Wall) 679.

4. "Where a local church is but a subordinate member of a superior general church organization, and has directly or impliedly consented to its form of government, that church is ordinarily bound by the decisions of the ecclesiastical judicatories. In these circumstances the civil courts cannot, in the process of resolving property disputes between the local and the general church, independently determine questions properly within the sphere of ecclesiastical bodies." *Lowe v. First Presbyterian Church,* 56 Ill.2d 404 (1974).

5. There is no evidence in the case before this Court which justifies interference by a civil court with the decision of an ecclesiastical body. *Gonzales v. Roman Catholic Archbishop of Manila.* 280 U.S. 1.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED as follows:

A. That all property of the Anna Church, both real and personal, is subject to the use, control and direction of UPCUSA and Presbytery, and the defendants are ordered to deliver to the plaintiffs, through the Anna Administrative Commission II, possession of all such property within 30 days after entry of this Judgment Order.

B. That the defendants are not entitled to use of any of the property of the Anna Church except in accordance with the direction of the Anna Administrative Commission II.

C. That the Defendant Anna Presbyterian Foundation make, execute and deliver a deed to the real estate described above reconveying same to the First Presbyterian Church of Anna, Il-

linois, for the use and benefit of the congregation of the Anna Church in accordance with the Constitution, Form of Government of UPCUSA.

D. That the defendants, and each of them, are permanently enjoined from interfering in any manner or degree with the orders and directives of the Anna Administrative Commission II in the performance by said Anna Administrative Commission II of its powers and duties under the Constitution, Form of Government of UPCUSA.

E. That defendants deliver possession of and make an accounting for the personal property described above to the First Presbyterian Church of Anna, Illinois, within 30 days after entry of this Judgment Order.

F. That the unilateral action of the Anna Church, its Session and congregation, purporting to dissolve its relationship with UPCUSA and Presbytery is null, void and of no force and effect.

G. That the Anna Church was on October 26, 1980, and still is a particular and constituent church within the single ecclesiastical entity of UPCUSA and governed by the Constitution, Form of Government of UPCUSA as set forth in the Book of Order.

H. That the Anna Church was and is an integral and particular church of UPCUSA and as such is subject to the provisions of the Book of Order, Form of Government, which, in Chapter IV, Section 34.01, defines "a particular church" as submitting to the Form of Government.

I. That under the Form of Government, Chapter XXXII, Section 62.11, should the Anna Church, as a particular church, abandon its work as a particular church in UPCUSA, its property reverts to Presbytery.

J. That under the First and Fourteenth Amendments to the Constitution of the United States of America and Article 1, Sec-

tion 3 of the Constitution of the State of Illinois (1970) the highest judicatory of UPCUSA, the General Assembly, is the only interpreter of the Constitution of UPCUSA, and that said General Assembly has determined that all property owned by a local church of UPCUSA whether used in programs of the local church or of a higher judicatory, or held for investment is held in trust for UPCUSA.

K. That said Anna Administrative Commission II is entitled to conduct services and worship at the Anna Church and that UPCUSA and Presbytery have the right to provide a pastor for said Anna Church.

L. That this Court retains jurisdiction of this cause for the purpose of enforcement of this Judgment Order.

DATED this 17 day of October, 1983.

Donald E. Garrison
Circuit Judge

APPENDIX B

No. 5-83-0716

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

Byron W. York, Joseph Van Roekel, Alan V. Pareis, Helen Westberg, Joe E. Logsdon, III, and Peyton Kunce, Individually and as Members of The Anna Administrative Commission II of the Southeastern Presbyterian Church of the United States of America, on behalf of said Anna Administrative Commission II and on behalf of the United Presbyterian Church of the United States of America and Southeastern Illinois Presbytery of the United Presbyterian Church of the United States of America,

Plaintiffs-Appellees,

v.

The First Presbyterian Church of Anna, Illinois, an Illinois Not-For-Profit Corporation, Anna Presbyterian Foundation, an Illinois Not-For-Profit Corporation, and Clair S. Albright, Helen Owens, Charlotte Rife, John Lutz, Lisa Wells, Jane Rader, Joel Meller, Norman Hicham and Joyce Verble, Individually and as Members of the Session of The First United Presbyterian Church of Anna, Illinois,

Defendants-Appellants.

Appeal from the Circuit Court
of Union County

Filed Nov. 9, 1984

Honorable Donald E. Garrison,
Judge Presiding.

MR. JUSTICE KARNS delivered the opinion of the court:

This appeal concerns a dispute between a small local church corporation, the First Presbyterian Church of Anna, Illinois, and its predecessor, the First United Presbyterian Church of Anna, Illinois (Anna Church) and its denominational organization, The United Presbyterian Church in the United States of America (UPCUSA). Anna Church appealed from an order of the circuit court of Union County granting injunctive and declaratory relief in favor of UPCUSA and its governing bodies. The central controversy involves the ownership and control of the property of Anna Church.

Defendant-Appellant, Anna Church, was formerly a member of UPCUSA, an unincorporated religious association of Presbyterian churches, having a hierarchical structure of church government. UPCUSA's Constitution provides that the local church is governed by a judicatory known as the Session, comprised of members of the local church, having immediate authority to direct and manage the affairs of the local church. The actions of the Session are, in many instances, subject to review and control by higher UPCUSA judicatories, called, in ascending order, the Presbytery, the Synod, and the General Assembly. UPCUSA's form of government is outlined in that part of the church constitution called the Book of Order, which delineates the duties, obligations, and authority of each judicatory.

In July 1980, UPCUSA's General Assembly presented Overture A, which consisted of a proposed amendment to UPCUSA's constitution in order to create an express trust, to the benefit of the denominational church organization, of all property held by the local churches and the judicatories of UPCUSA. Although a similar proposal failed in 1929, Overture A was approved and the amendment was added in May 1981. On October 27, 1980, Anna Church held a meeting of its members, called for the purpose of amending its Articles of Incorporation. By a vote of 98-28, the congregation amended the Articles with certain provisions which in essence amounted to an ab-

solute withdrawal from UPCUSA. Immediately afterwards, the defendants organized the Anna Presbyterian Foundation. By a margin of 100 to 15, the members voted to convey the real property of the local church to this entity, and the transfer was effected by warranty deed on October 28, 1980. Although the reasons for these actions were never fully clarified, the record indicates that substantial concern existed in the local congregation over the ramifications of the proposed Overture A.

On November 13, 1980, at its stated meeting, plaintiff-appellee Presbytery appointed an administrative commission to investigate the actions of Anna Church. The investigation primarily consisted of a meeting attended by the commission and several members of the Anna Church's former Session. On the Commission's finding of disunity and "utter disregard" by the Session of UPCUSA's Book of Order, Presbytery appointed a second commission (plaintiff Anna Administrative Commission II) to replace the Anna Church Session, which was formally removed by the same order of Presbytery on November 20, 1980. Both the removal and the appointment were authorized by UPCUSA's constitutional directives, although Anna Church argued at trial and asserts on appeal that Presbytery's order was somehow effected without procedural due process.

When Anna Church continued to exercise control over the local church property, UPCUSA, Presbytery, and Anna Administrative Commission II sought a declaratory judgment. After a non-jury trial, the court ordered the defendants to convey all the church property to the Administrative Commission, and enjoined the defendants from interfering with the Commission's authority and control. The court declared that Anna Church remained a constitutent member of the denomination, subject to its orders and decisions, that the local church's withdrawal was invalid, and that UPCUSA's General Assembly had determined that all church property was held in trust for UPCUSA. Based on judicial deference to the General Assembly's determination, the trial court declared that defendants were no longer entitled to the use of any church property.

Constitutional restraints upon the adjudication of church controversies have not eliminated the recurrence of bitter property disputes such as the one brought in this appeal. (Note, Judicial Intervention in Disputes Over the Use of Church Property, 75 Harv.L.Rev. 1142 (1962); Annot., 52 A.L.R.3d 324 (1973).) Unfortunately, the authoritative case law offers no specific mandate for deciding the issues presented. Rather, the approaches sanctioned by the Supreme Court of the United States are advanced by the parties as contrasting principles for our analysis. A review of the constitutionally acceptable methods is therefore helpful to our disposition of the case at bar.

Traditionally, church litigation involving the application of ecclesiastical decisions have been decided in accordance with the principles articulated in *Watson v. Jones* (1872), 80 U.S. (13 Wall.) 679, 20 L.Ed. 666. In *Watson,* two rival factions of a local Presbyterian church became involved in litigation over control of the church premises. The General Assembly of the larger denominational church decided in favor of the majority faction, but the minority group took control of the property. Both the deed and the charter provided that the property and the trustees of the local church were subject to the fundamental laws of the general church. In *Watson,* the court held for the majority under an absolute principle of judicial deference to internal ecclesiastical decisions. The deference rule was to be applied in those cases where the religious entity holding the property is a subordinate member of a general church organization haveing a hierarchical structure. Specifically enunciated, compulsory deference was mandated "Whenever the questions of discipline, or faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried * * *." 80 U.S. 679, 727, 20 L.Ed. 666, 676.

The language used by the high court in *Watson* has been quoted for decades in cases involving church disputes. Although a controversy within a hierarchical system of church govern-

ment can be identified by the *Watson* definitional formula and therefore presented as a case requiring compulsory deference, the rule itself is not so precisely applied. The *Watson* language omits reference to decisions rendered by an internal church judicatory concerning matters entirely civil in nature. Thus, where the litigation involves only the issue of property control, the *Watson* standard fails as a constitutional imperative.

An alternative to the strict deference of *Watson* was identified in *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969), 393 U.kS. 440, 21 L.Ed. 658, 89 S.Ct. 601. The *Hull* case involved the withdrawal of two local churches from the general hierarchical organization, and subsequent discord over the control of the church property. The court stated that civil courts are proper fora for settling religious property disputes, and rejected any application of *Watson* which would preempt civil review of church decisions affecting property rights. The *Hull* principle left civil courts free to adjudicate property disputes if the decisional process averted underlying doctrinal conflicts. As the *Hull* case recognized the efficacy of a "neutral principles of law" analysis, this method was unequivocally endorsed in *Jones v. Wolf* (1979), 443 U.S. 595, 61 L.Ed.2d 775, 99 S.Ct. 3020, allowing state courts to adopt a "neutral principles of law" analysis in resolving property disputes if they chose to do so, rather than apply the principle of judicial deference heretofore thought to be required by *Watson*.

Despite appellants' contrary assertion, UPCUSA maintains a hierarchical structure of government and, at least until the events of October 1980, the Anna Church's subordinate posture in the general church organization left it subject to the decisions of the controlling judicatories. This circumstance does not, however, preclude a civil court decision respecting the Anna Church property, even under a *Watson* stricture, provided that the decision is reached without intrusion into UPCUSA's ecclesiastical domain. In our view the threshold question for our

consideration is whether we are constrained under our state decisional law. Appellee maintains that we are committed to compulsory deference and in support of this contention, cites *Lowe v. First Presbyterian Church* (1974), 56 Ill.2d 404, 308 N.E.2d 801.

In *Lowe,* the Presbytery of the general church formally dissolved the local church in accordance with its church constitutional authority, and ordered the local church to convey its property to the Church Extension Board of the Presbytery. The local congregation refused, claiming that the Board had previously quitclaimed the property to the local church and that Presbytery lacked authority to dissolve their local church or to order the reconveyance. The court held that a simple examination of the deed to the property was not sufficient to resolve the controversy and stated that a detailed inquiry into the polity of the general church was necessitated by the issues presented. Finding that the denominational church was hierarchical in form, and that the local church was its subordinate member, the court deferred to the internal church decision because "[i]n these circumstances, the civil courts cannot, in the process of resolving property disputes between the local and the general church, independently determine questions properly within the sphere of ecclesiastical bodies." 56 Ill.2d 404, 415, 308 N.E.2d 801, 807.

We find that the *Lowe* decision does not prevent our disposition of this appeal by a neutral principles analysis. We note preliminarily that the significant *Jones* case was decided several years after *Lowe.* The unambiguous approval in *Jones* of a neutralized analysis of church property disputes, together with the high court's thoughtful articulation of the advantages and necessary cautions which inhere in the neutral principles method, support our belief that our own supreme court may be inclined to endorse the adoption of the neutral approach in reviewing property disputes such as the present one.

The factual disparity between *Lowe* and the instant case serves as an additional basis for our rejection of *Lowe* as

dispositive of the issues presented here. In *Lowe,* the authority of the parent church to dissolve the subordinate congregation and to direct a conveyance of its assets was explicitly authorized in the church constitution and implemented accordingly. In contrast, no dissolution of the Anna Church was attempted, for reasons unapparent in the record, although the identical constitutional option existed. Unlike *Lowe,* the internal decision to which the trial court yielded in the instant case is not supported by demonstrable concepts of ecclesiastical law which grant a clear right denominational appropriation of local church assets. Therefore, even if the removal of the Anna Church Session is judicially endorsed, the property issue is left unresolved.

Moreover, we do not read *Lowe* as a blanket adoption of the compulsory deference rule, foreclosing review by neutral principles in all cases presenting internal religious controversies. The thrust of appellees' arguments appears to be an assertion that the mere categorization of the local-general church relationship as hierarchical is determinative of the question of property control. to extract such a meaning from *Lowe* and other pre-*Jones* cases is to discount the judicial role in resolution of civil property rights which has been emphatically recognized and painstakingly qualified in the principles which have evolved since *Watson* and which have culminated in the *Jones* endorsement of a neutral approach.

Our careful examination of *Lowe* produces a belief in its conformance to both the dererence of *Watson* and the neutrality of *Jones.* Where appropriate, a church decision requires judicial acquiescence. But when the property question is distinguishable from church doctrine, the issue can, and must, be decided without impermissible intrusion into ecclesiastical jurisdiction.

In the instant case, no question of religious doctrine or practice was ever addressed or decided by the Presbytery. The only matter considered and ruled upon by the higher judicatory was the removal and replacement of the Anna Church Session, an entity which had arguably ceased to exist. Presbytery's decision

included no mention of severance by the former Session or of legal ownership of the church property. Endorsement of the removal action is mandated by First Amendment considerations, but it fails to resolve the real issue presented in this appeal. We believe that the neutral principles approach is the appropriate method for determining the central question of property control.

Our preference for a neutralized analysis is not limited to our belief in its adaptability to the facts presented in the case at bar. We are additionally persuaded by the more widespread benefits of its utilization. In *First Presbyterian Church of Schenectady v. United Presbyterian Church* (1984), 62 N.Y.2d 110, 464 N.E.2d 454, the court of appeals of New York adopted a neutral principles approach on facts virtually identical to those presented for our review, and remarked on the method's advantages:

> "It is completely secular in operation, it is flexible enough to accommodate all forms of religious organizations and it relies upon well-established principles of law familiar to Judges and lawyers. It also provides predictability so that religious organizations may order their affairs to account for its application. Moreover, we agree with those who have observed that the doctrine is preferable to deference because it does not prefer one group of disputants to another. The deference approach assumes that the local church has relinquished control to the hierarchical body in all cases, thereby frustrating the actual intent of the local church in some cases. Such a practice, it is said, discourages local churches from associating with a hierarchical church for purposes of religious worship out of fear of losing their property and the indirect result of discouraging such an association may constitute a violation of the free exercise clause." 62 N.Y. 2d 110, ____, 464 N.E.2d 454, 460.

The policies advanced by the New York court apply especially to the instant facts. UPCUSA's Overture A was concededly proposed to conform to the *Jones* ruling, and Anna Church's reaction to the proposal leaves no doubt that the relationship between the parties lacked an explicit mutual understanding of property rights within the religious structure or otherwise. The judicial task, then, is to settle the property rights, most carefully, avoiding invasion into the ecclesiastical purview.

In applying neutral principles, courts will generally examine the language of the deeds, the terms of the local corporate charter, the state statutes applicable to church property, and the relevant provisions of the church constitution and laws. (*Jones v. Wolf,* 443 U.S. 595, 603, 61 L.Ed.2d 775, ____, 99 S.Ct. 3020, 3025, citing *Maryland and Va. Churches v. Sharpsburg Church,* 396 U.S. 367, 368, 24 L.Ed.2d 582, ____, 90 S.Ct. 494, 500.) An examination of the evidence as to the first three items for consideration yields nothing that creates an express or implied trust or other interest vested in the general church. It is clear from the record that title to the local church property was conveyed to the Anna Presbyterian Foundation, an Illinois not-for-profit corporation, on October 28, 1980, prior to the removal decision and long before the adoption of Overture A in May 1981. This analysis is referred to as the "formal title" doctrine and was the method employed by the Georgia supreme court in ruling in favor of the local church upon remandment of *Hull.* (On remand, *sub. nom. Presbyterian Church in United States v. Eastern Heights Presbyterian Church* (1969), 225 Ga. 259, 167 S.E.2d 658; *cert. den.* 396 U.S. 1041.) The last item of analysis requires cautious inquiry. The provisions in chapter XI of part II of UPCUSA's Constitution, utilized by the UPCUSA Presbytery to remove the Anna Church Session, is not helpful to Appellees' cause because the provisions do not confer title or right of control to the local property, nor can a purely secular interpretation support any contention that those provisions operate to create some type of property interest in the general church. The constitutional provisions which directly relate to

the issue of property are found in chapter XXXIII of the Book of Order, which authorizes a takeover of local church property upon dissolution or extinction, neither of which occurred in the Anna Church. Because nothing which can be legitimized by neutral legal principles is discoverable from the record to support appellees' right to the local church property, we reverse those portions of the trial court's order which affect the property interest of Anna Church.

We also reverse the trial court's declaration of the nullity of Anna Church's actions of withdrawal and severance, holding that to make such a ruling impermissibly intrudes into church polity. Despite appellees' concessions that the local church had the right to withdraw from the denomination, the trial court nullified the withdrawal apparently accepting the general church's assertion that the local congregation could not maintain control over church property upon severance from UP-CUSA. Also reflected in the judgment is the trial court's acquiescence in the General Assembly's interpretation of UP-CUSA's constitution, which established a superior interest in the local church property for the benefit of the denomination. These contentions by Appellees amounted to self-serving arguments rather than supportable allegations of fact and should not have been included in the trial court's judgment. The constitutional restraints which control religious property disputes, whether applied through *Watson* deference or a neutral analysis, require that the only action of the trial court which can be affirmed is the judicial conformance to Presbytery's decision of removal and replacement of the Anna Church Session. On the other hand, because "the State has a legitimate interest in resolving property disputes," (*Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969), 393 U.S. 440, 445, 21 L.Ed.2d 658, ____, 89 S.Ct. 601, 604), our neutral disposition of the property question is not only an appropriate resolution but a judicial obligation. Our task has been made easier by the limited scope of the decision of the church judicatory, confining the ultimate

result of the instant litigation to a judicial acknowledgement of the removal and replacement of the Anna Church Session. We affirm that aspect of the judgment order and reverse those portions which purport to do anything more.

AFFIRMED IN PART; REVERSED IN PART.

Welch, P.J. and Harrison, J., concur.

APPENDIX C

No. 5-83-0716

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

Byron W. York, Joseph Van Roekel, Alan V. Pareis, Helen Westberg, Joe E. Logsdon, III, and Peyton Kunce, Individually and as Members of The Anna Administrative Commission II of the Southeastern Presbyterian Church of the United States of America, on behalf of said Anna Administrative Commission II and on behalf of the United Presbyterian Church of the United States of America and Southeastern Illinois Presbytery of the United Presbyterian Church of the United States of America,

Plaintiffs-Appellees,

v.

The First Presbyterian Church of Anna, Illinois, an Illinois Not-For-Profit Corporation, Anna Presbyterian Foundation, an Illinois Not-For-Profit Corporation, and Clair S. Albright, Helen Owens, Charlotte Rife, John Lutz, Lisa Wells, Jane Rader, Joel Meller, Norman Hicham and Joyce Verble, Individually and as Members of the Session of The First United Presbyterian Church of Anna, Illinois,

Defendants-Appellants.

Appeal from the Circuit Court of Union County.

ORDER

This cause having been considered on appellees' petition for rehearing and the court being advised in the premises;

IT IS THEREFORE ORDERED that the petition for rehearing, be, and the same hereby is, DENIED.

APPENDIX D

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62706
(217) 782-2035

April 2, 1985

Mr. John M. Ferguson
Attorney at Law
P. O. Box 1227
Belleville, IL 62223

No. 61328 - Byron W. York, et al., etc., petitioners, v. The First Presbyterian Church of Anna, Illinois, etc., et al., respondents. Leave to appeal, Appellate Court, Fifth District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on April 23, 1985.

BEST AVAILABLE COPY

Office - Supreme Court, U.S.
FILED
JUL 27 1985
ALEXANDER L. STEVAS
CLERK

No. 84-2035

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

BYRON W. YORK, JOSEPH VAN ROEKEL, ALAN V. PAREIS, HELEN WESTBERT, JOE E. LOGSDON III, and PEYTON KUNCE, Individually as as Members of THE ANNA ADMINISTRATIVE COMMISSION II OF THE SOUTHEASTERN PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA, on behalf of said ANNA ADMINISTRATIVE COMMISSION II and on behalf of THE UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA and SOUTHEASTERN ILLINOIS PRESBYTERY OF THE UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA,

Petitioners,

vs.

THE FIRST PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, an Illinois Not-For-Profit Corporation, ANNA PRESBYTERIAN FOUNDATION, an Illinois Not-For-Profit Corporation, and CLAIR S. ALBRIGHT, HELEN OWENS, CHARLOTTE RIFE, JOHN LUTZ, LISA WELLS, JANE RADER, JOEL MELLER, NORMAN HICHAM and JOYCE VERBLE, Individually and as Members of the Session of THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT

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QUESTIONS PRESENTED

I.

WHETHER ANY SUBSTANTIAL FEDERAL QUESTION IS INVOLVED, BECAUSE THE ILLINOIS APPELLATE COURT RESOLVED THE PROPERTY DISPUTE ON THE BASIS OF NEUTRAL PRINCIPLES OF STATE LAW THAT DID NOT INVOLVE INQUIRY INTO RELIGIOUS DOCTRINE, PRACTICE OR PRECEPTS.

II.

WHETHER THE ILLINOIS APPELLATE COURT WOULD HAVE DECIDED A FEDERAL QUESTION, AND IN A WAY IN CONFLICT WITH THE DECISIONS OF THIS COURT, ONLY HAD IT FOLLOWED PETITIONERS' URGING TO INVOLVE ITSELF IN INTERPRETING THE UPCUSA CONSTITUTION IN RELIANCE ON THE RELIGIOUS DOCTRINE, PRACTICE AND PRECEPTS OF UPCUSA.

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No. 84-2035

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

BYRON W. YORK, JOSEPH VAN ROEKEL, ALAN V. PAREIS, HELEN WESTBERT, JOE E. LOGSDON III, and PEYTON KUNCE, Individually as as Members of THE ANNA ADMINISTRATIVE COMMISSION II OF THE SOUTHEASTERN PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA, on behalf of said ANNA ADMINISTRATIVE COMMISSION II and on behalf of THE UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA and SOUTHEASTERN ILLINOIS PRESBYTERY OF THE UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA,

Petitioners,

VS.

THE FIRST PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, an Illinois Not-For-Profit Corporation, ANNA PRESBYTERIAN FOUNDATION, an Illinois Not-For-Profit Corporation, and CLAIR S. ALBRIGHT, HELEN OWENS, CHARLOTTE RIFE, JOHN LUTZ, LISA WELLS, JANE RADER, JOEL MELLER, NORMAN HICHAM and JOYCE VERBLE, Individually and as Members of the Session of THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT

The First Presbyterian Church of Anna, Illinois, a corporation, and other Respondents named in the caption, respectfully submit this Brief in Opposition to the Petition for Writ of Certiorari [hereinafter "Petition"] to the Appellate Court of Illinois, Fifth District.

JURISDICTIONAL STATEMENT

The ground on which the jurisdiction of this Court is attempted to be invoked is not present. The Appellate Court of Illinois did not, as the Petition alleges, "consider and determine the issue of the applicability" of the First Amendment. The Appellate Court fully acknowledged the applicability of the First Amendment, and applied neutral principles of the law of the State of Illinois totally within the circumscription prescribed by the First Amendment. See REASONS FOR DENYING THE WRIT, part I, *infra*.

STATEMENT OF THE CASE

Petitioners' Statement of the Case contains both inaccuracies and significant omissions. Further, Petitioners represent (Petition p. 3) to this Court that Respondents never challenged, and the Illinois Appellate Court did not find any fault with, the Trial Court's findings of fact. That constitutes an egregious misrepresentation. Correction is necessary.

Respondents have throughout the Illinois appellate review process challenged the Trial Court's findings on the ground that the Trial Court Judgment was substantially a re-iteration of Petitioners' Amended Complaint—consisting largely of conclusions of ultimate fact, intermixed with Petitioners' theories of action, all shrouded in ecclesiastical characterizations. Further, the Illinois Appellate Court does, contrary to Petitioners' misrepresentation, find fault with the Trial Court's finding that there existed an "Anna Church Session" for Petitioners' Administrative Commission to replace (Petitioners' Appendix A-28), and with those portions of the Trial Court Judgment affecting property interests and acquiescing in UPCUSA's General Assembly's interpretation of its own constitution—describing these findings as "self-serving arguments rather than supportable allegations of fact * * * *". (Petitioners' Appendix A-31).

The following clarified, corrected, or additional facts are material to consideration of the questions presented.

This case arises from a dispute over ownership and control of church property. The principal adversary among Petitioners is The United Presbyterian Church in the United States of America [hereinafter "UPCUSA"]; among Respondents the principal adversary is The First Presbyterian Church of Anna, Illinois, an Illinois General not-for-profit Corporation [hereinafter "Anna Church Corporation"]. (Petitioners' Appendix A-2, A-23).

UPCUSA is the same general denomination which has heretofore been denied *Certiorari* in cases cited in the TABLE OF AUTHORITIES. UPCUSA,s organization is variously characterized as "hierarchical" or "connectional", depending upon whatever a writer believes the characterization will suggest as to the nature and extent of the power, if any, of one UPCUSA judicatory over another. However, the agreed basis for UPCUSA's relationship with local congregations is its Book of Order, generally [and hereinafter} referred to as its "Constitution". (Petitioners' Appendix A-6, A-23). The entire Constitution—not only those paragraphs cited in the Petition—was in the Trial Court Record and was before the Illinois Appellate Court.

A presbyterian congregation in Anna, Illinois, had a relationship with UPCUSA and its predecessors commencing in 1866.

In 1929, UPCUSA attempted to insert a trust provision into its Constitution, to require that local church corporations declare in their charter that their "property is held in trust under the Constitution of and for [UPCUSA]". But the proposal was rejected. It never became a part of the Constitution. (Petitioners' Appendix A-23).

In 1975, the congregation in Anna incorporated itself under state law—the Illinois General Not-for-Profit Corporation Act. The congregation did not, as the Petition claims, simply "form a separate and distinct corporation to handle property". (Petition p. 8, 25). Rather, the members of the congregation *were* the corporation, and by Article IX, Section I of its By-Laws, subject to the ultimate civil autonomy of state law. (Petition p. 11, 25).[1]

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[1] Petitioners' argument that Anna Church Corporation was solely "to handle property" is based on its misleadingly half-quoting (Petition p. 25) only the last phrase of Chapter XXXII, Paragraph 62.04, of its Constitution. That Paragraph, which was consistent with Anna Church Corporation's formation, belies UPCUSA's claim. Paragraph

Subsequently, in 1979 occurred the initial event contributing to issues precipitating this litigation: this Court decided *Jones v. Wolf.*

In response to this Court's decision, UPCUSA, in July 1980, again proposed to insert a trust provision into its Constitution. UPCUSA admitted that the amendment (1) would "make explicit" UPCUSA's "understanding" of property holding, (2) was responsive to the decision in *Jones v. Wolf,* and (3) addressed instances where a congregation withdrew from UPCUSA. (T. 506-507; Respondents' Appendix B).

On October 26, 1980, Anna Church Corporation, relying, *inter alia,* on UPCUSA's having admitted the absence of any Constitutional barrier, severed its relationship with UPCUSAby Amendment of its Articles of Incorporation and By-Laws. (Petitioners' Appendix A-11, A-23 and A-24).

Anna Church Corporation's corporate actions--including the manner of voting, and the efficacy of the 98-28 and 100-15 votes in favor of severance and conveyance—were all in full compliance with its corporate Articles and By-Laws and with the controlling provisions of the General Not-for-Profit Corporation Act. Petitioners have never asserted, and the Trial Court did not find, any defect whatsoever in the corporate proceedings under Illinois law. As a matter of compliance with civil

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62.04 states that "Each particular church shall be incorporated, cause a corporation to be formed and maintained* * *." (Respondents' Appendix A) At the same time is also belied Petitioners' elliptical allusion to Paragraph 62.04 to support their ruse of two separate entities in Anna (Petition p. 4). The purpose of the ruse is dual: to suggest the dispute is an "ecclesiastical issue", in order to enter the pale of *Watson,* and in order to have a semblance for their claim that their Administrative Commission had a "Session" to replace after October 26, 1980.

law, Anna Church Corporation's actions on October 26, 1980, and thereafter were unassailed and remain unassailable.[2]

On October 26, 1980, no paragraph, part or provision of UPCUSA's Constitution forbade or prohibited severance of relations with UPCUSA; by UPCUSA's own admission, withdrawal of a congregation was not even "addressed" in its Constitution at that time. (Respondents' Appendix B).

On October 26, 1980, no paragraph, part or provision of UPCUSA's Constitution contained any forfeiture or reversion of local church property in the event of severance.

On October 26, 1980, no paragraph, part or provision of UPCUSA's Constitution contained any trust in favor of UPCUSA, or any contractual or proprietary interest of UPCUSA in local church property.

On October 26, 1980, formal title to Anna Church Corporation's real and personal property stood indefeasibly in its name alone under state property law. On October 28, 1980, Anna

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[2] Further, although legally irrelevant, is the fact that UPCUSA's Constitution [¶35.01] is based on the principle of majority rule (Petition p. 6, footnote 4), which fully would have effectuated Anna Church Corporation's votes of 98-28 and 100-15.

The significance of the unassailed and unassailable actions of the Anna congregation's actions is dual. First, it relieves the necessity for the two-stage analysis alluded to by the *Jones* dissent [443 U.S., at 611]. Because, in *Jones,* the "only question" presented was which of the competing factions in the local congregation was, under state neutral principles, entitled to control of the congregation; here, Anna Church Corporation's full and unquestioned compliance with state corporation law resolved that issue. Secondly, by elimination of the second-stage issue, it leaves only a dispute between the equivalent of "central councils of a church organization and [the legal equivalent of] a unanimous local congregation"—a situation where the *Jones* dissent agreed that a neutral-principles analysis would suffice [443 U.S., at 614].

Church Corporation gave its property by conveyance to Respondent Anna Presbyterian Foundation, an Illinois General Not-for-Profit Corporation. (Petitioners' Appendix A-11, Paragraph 15, and A-30).

On October 26, 1980, UPCUSA's Constitution did, however, contain provisions disclaiming any civil effect or civil jurisdiction whatsoever. In particular, as a PRELIMINARY PRINCIPLE of its FORM OF GOVERNMENT, the Constitution, Paragraph 31.08, states that "ecclesiastical disciplines must be purely moral or spiritual in its object, and *not attended with any civil effects*"; of its CHURCH GOVERNMENT by judicatory (defined in Petition, p. 7, ¶¶ 3 and 4), the Constitution, Paragraph 35.03, ordains that "judicatories *ought not to possess any civil jurisdiction,* or to impose any civil penalties. Their *power* is *wholly moral or spiritual,* * * *." (See entire text of Paragraphs 31.08 and 35.03 in Respondents' Appendix C; Emphasis supplied hereinabove).

On November 20, 1980, UPCUSA's Constitution still contained the civil-effect disclaimers. But on that day, UPCUSA's Presbytery decided to create an "Administrative Commission" to replace a non-existent "Session" in Anna. And it is that "decision", and that Administrative Commission, for which UPCUSA now claims civil effect and civil jurisdiction.[3]

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[3] Petitioners suggest UPCUSA's Constitution [Chapter XXXII, ¶62.11] offers a "dissolution" means for asserting control, but that its Presbytery "has not yet adopted this remedy, in connection with the Anna church, but it could do so at any time". (Petition p. 27). This is another misrepresentation of fact. UPCUSA alleged "dissolution" in its Amended Complaint [C. 59, ¶13; C.63, ¶(6)]; UPCUSA's own witness, Stated Clerk William P. Thompson, admitted pursuit of "dissolution" was not appropriate. [T. 125-126]. Even the Trial Judge found that the congregation was not extinct (Petitioners' Appendix A-15, at ¶26), and the Appellate Court found that neither dissolution nor extinction had occurred. (Petitioners' Appendix A-31).

Presbytery's November 20, 1980, "decision" purports at most to remove "the Session of the First United Presbyterian Church of Anna". (Petition p. 15). In addition to lacking any basis in either ecclesiastical *or* civil law for any civil effect or jurisdiction, the "decision" is fraught with both conceptual and factual anomalies. First, after the October 26, 1980, severance, Anna Church Corporation's Board of Directors did not purport to be any UPCUSA judicatory called a "session". Consequently, after October 26, 1980, there was no "session" to remove, and there was no person claiming to hold any office as a member of any "session". Also, there was not then or ever thereafter any competing faction claiming to be Anna Church Corporation's Board of Directors. Further, the "decision" did not purport to remove any *person* from membership in any session. The "decision" did not claim retroactively to remove any person who was a member of any "session" on or prior to October 26, 1980. The "decision" did not claim to remove any member from Anna Church Corporation's Board of Directors. There was simply no dispute about who were members of Anna Church Corporation's Board of Directors.

Moreover, the actual dispute was over Anna Church Corporation's severance, its property, and its conveyance. Presbytery neither made, nor attempted to make, any "decision" about severance or property. Presbytery therefore failed to either address or resolve any dispute whatsoever between UPCUSA and Anna Church Corporation. The Illinois Appellate Court properly noted the limited scope of the Presbytery proceeding. (Petitioner's Appendix A-28, A-29, A-31 and A-32).

UPCUSA argues that the Presbytery decision empowered its Administrative Commission to take over the property, because a session had power to direct a congregation what to do with its property. But, even assuming *arguendo* that the Commission had the civil power to direct a non-existent session to direct a civil corporation, the facts are that the Commission did not attempt to direct any session to direct Anna Church Corporation to do, or not to do, anything with its property.

Instead, in March, 1981, UPCUSA commenced this action, asking the Illinois Trial Court to do what neither it nor Presbytery had done or attempted to do, i.e., to void severance and set aside the conveyance. Moreover, the Commission, which was created November 20, 1980, requested that the Court effectuate the Commission's non-exercise of its claimed power retroactively, i.e., to October 26, 1980.

Effective May 23, 1981, UPCUSA finally amended Chapter XXXII of its Constitution, adding:

> All property held by or for a particular church * * * is held in trust nevertheless for the use and benefit of The United Presbyterian Church in the United States of America.

In the Trial Court, UPCUSA urged, and was granted relief on, the theory of judicial deference to the Presbytery "decision", based upon broad interpretations of this Court's *Watson v. Jones* and the Illinois Supreme Court's *Lowe v. First Presbyterian Church.* (Petitioners' Appendix A-19, ¶¶3, 4 and 5).

The Illinois Appellate Court readily and easily distinguished *Watson* (Petitioners' Appendix A-25, 26) and *Lowe* (Petitioners' Appendix A-27), noted that the Presbytery "decision" was insufficient for judicial deference, anyway, (Petitioners' Appendix A-31), and adopted for Illinois the neutral principles approach (Petitioners' Appendix A-27, A-29). The Illinois Supreme Court denied leave to appeal. (Petitioners' Appendix A-34).

REASONS FOR DENYING THE WRIT

I.

No Substantial Federal Question Is Involved, Because The Illinois Appellate Court Resolved The Property Dispute On The Basis Of Neutral Principles Of State Law That Did Not Involve Inquiry Into Religious Doctrine, Practice Or Precepts.

The Appellate Court of Illinois explicitly utilized the neutral principles of law of the State of Illinois in resolving the property dispute. (Petitioners' Appendix A-27 and 29).

The Appellate Court also explicitly examined "the language of the deeds, the terms of the local corporate charter, the state statutes applicable to church property, and the relevant provisions of the church constitution and laws" searching for "an express or implied trust or other interest vested in the general church * * * * [provisions conferring] title or right or control to the local property * * * [or] some type of property interest in the general church". (Petitioners' Appendix A-30).

The Appellate Court was further explicit in its "most carefully, avoiding invasion into the ecclesiastical purview" and utilizing a "purely secular interpretation" of UPCUSA's Constitution. (Petitioners' Appendix A-30). The Appellate Court refused "impermissibly [to] intrude into church polity". (Petitioners' Appendix A-31).

The Appellate Court,—in its application of the neutral principles of the secular law of Illinois to the prescribed documents, and its concomitant avoidance of matter requiring inquiry into religious doctrine, practice and polity—, explicitly and strictly decided the case within the permissible proscribed pale of state law in the manner prescribed by the decisions of this Court for state court resolution of property disputes: *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601 (1969) [hereinafter "*Hull*"]; *Maryland and Virginia elder-*

ship of the Churches of God v. Church of God at Sharpsburg, 396 U.S. 367, 24 L.Ed.2d 582, 90 S.Ct. 494 (1969) [hereinafter "*Md. & Va. Churches*"]; *Jones v. Wolf,* 443 U.S. 595, 61 L.Ed.2d 775, 99 S.Ct. 3020 (1979) [hereinafter "*Jones*"]. The Appellate Court also was persuaded by *First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States of America,* 62 N.Y.2d 110, 464 N.E.2d 454 (1984) [hereinafter "*Schenectady*"], for which this Court has since denied *certiorari,* 83 L.Ed.2d 404, 105 S.Ct. 514 (1985).

The Appellate Court *followed* this Court's proscriptions as to permissible boundaries of its inquiry, and its prescriptions as to documents subject to inquiry, as set forth in the cited precedents. However, it did not *decide* any of the federal questions already decided in any of those precedents.

Hull is a case of severance from, followed by a property dispute with, Presbyterian Church in the United States ["PCUS"]—a denomination also self-characterized as "hierarchical" based on a substantially similar Constitution as, and now having merged with, UPCUSA. There, as here, local churches had severed, an Administrative Commission had been created, it acknowledged severance, and proceeded to take over the local church. The local church then sued to enjoin trespassing on its property. PCUS moved to dismiss on the basis of compulsory deference. [Id., 443; 444, footnote 3]. Georgia Courts had determined that PCUS had departed from doctrine, that implied trust had terminated, and enjoined PCUS from interfering. The case therefore raised new questions as to deference, inquiry into departure from doctrine, implied trust, and the like. This Court *decided* that civil court resolution of "controversies over religious doctrine and practice" was prohibited by the First Amendment, and that the First Amendment commanded civil court resolution of church property disputes without violation of the prohibition. [393 U.S., at 449]. This Court further *decided* that civil court resolutions be according to "neutral principles of law, developed for use in all property

disputes, * * *." [393 U.S., at 449]. The Appellate Court did not involve itself in re-deciding the federal constitutional questions decided in *Hull;* it merely followed *Hull's* command to apply state secular law as it would in any other property dispute.

Md. & Va. Churches' Per Curiam by this Court then *decided* that a Maryland State Court, in resolving a church property dispute in reliance upon "state statutory law * * * language in the deeds * * * charter of the corporations * * * the constitution of the [general denomination] pertinent to the ownership and control of church property", without inquiring into religious doctrine, did not involve a substantial federal question. [396 U.S., at 367-368]. The concurrence amplified the decision to include First Amendment proscription against precisely the intrusion UPCUSA desired of the Appellate Court in the case at bar:

> To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine. [396 U.S., at 369].

Again, the Appellate Court did not *decide Md. & Va. Churches'* prescriptions as to permissible documents or its proscription as to probing into allocation of power; the Appellate Court explicitly *followed* both the prescription and the proscription. And in the same manner of applying state law as did the Maryland Court, the Illinois Court avoided involvement in any federal question.

Jones is the most recent decision by this Court. It, like *Hull* and the case at bar, involves the same scenario of severance, the claim for civil control by a Presbytery Administrative Commission purporting to replace a non-existent Session, followed by the property litigation. Again, as in *Hull,* PCUS was the general denomination and UPCUSA its *Amicus Curiae.*

The federal question decided by this Court in *Jones* is a reaffirmation of *Hull* and *Md. & Va. Churches:* a state civil court may, consistent with the First and Fourteenth Amendments, decide a church property dispute on the basis of "neutral principles of law" [443 U.S., at 597, 604, 605-06], and that compulsory deference is not required in church property disputes [443 U.S., at 605]. Secondly, *Jones* again indicated that the "neutral principles" were those of state, not federal constitutional, law, emphasizing that the neutral principles of law to be utilized by the Georgia Court—to resolve that case's factual issue as to whether the majority faction of the congregation represented the religious corporation—was not a principle of federal law, but a principle of Georgia *state* law; for examples: "if in fact *Georgia has adopted* a presumptive rule of majority representation" [443 U.S., at 607]; "the *State may adopt* any method of overcoming the majoritarian presumption, so long as the use of that method does not impair free-exercise rights or entangle the civil courts in matters of religious controversy" [Id., at 608]; and, "Because these critical issues of *state law* remain undetermined, * * *". [Id., at 608, footnote 5; Emphasis Supplied].

Jones further *decided,* by describing more fully, the *instruments* to be examined, relied upon, and interpreted, viz., by copious references to the deeds, state statutes applicable to church property, local church charters, and "the provisions in the constitution of the general church *concerning the ownership and control* of church property". [Id., at 603; Emphasis Supplied].

Finally, *Jones* did *decide* more specifically the concepts to be included and excluded in application of "neutral principles". Included are the "well-established concepts of trust and property law familiar to lawyers and judges" [Id., at 603]; excluded are "*religious precepts* in determining whether the document indictated that the parties have intended to create a trust". [Id., at 604].

Once again, and upon the same scenario of events, the Illinois Appellate Court *followed* all decisions made in the *Jones* opinion. It did not *decide* any of the federal constitutional questions or guidelines promulgated in *Jones*. The Appellate Court accepted its constitutionally-proscribed sphere of application of secular state law, and proceeded to interpret the prescribed documents by secular state law. What this Court prescribed is what the Appellate Court examined, and found devoid of purely secular provisions creating ownership and control in UPCUSA. Clearly having functioned within its proscribed boundary, the Appellate Court decision did not involve any federal question, much less a substantial federal question.

II.

The Illinois Appellate Court Would Have Decided A Federal Question, And In A Way In Conflict With The Decisions Of This Court, Only Had It Followed Petitioners' Urging To Involve Itself In Interpreting The UPCUSA Constitution In Reliance On The Religious Doctrine, Practice And Precepts Of UPCUSA.

The Appellate Court of Illinois consciously, explicitly, and demonstrably refrained from involving itself in the interpretation of UPCUSA's Constitution in other than a "purely secular" way. (Petitioners' Appendix A-30 and A-31).

Petitioners Reasons For Granting The Writ suggests the Appellate Court should have gone further. Petitioners intermingle the following arguments: [1] The Appellate Court ignored state precedent (Petition p. 19); [2] it failed to declare "the rights and legal relations" between the parties, presumably a violation of Illinois' declaratory judgment statute (Petition p. 19); [3] it should have applied *Watson v. Jones'* (80 U.S. 666) [hereinafter "*Watson*"] "broad doctrine of judicial deference" to the Presbytery "decision" (Petition p. 20-24); and [4] it "misapplied" neutral principles of law, by "ignoring" certain self-serving and self-selected pragraphs of UPCUSA's Constitution (Petition pp. 19-20, 24-30).

Arguments [1] and [2] are matters of state law subject to review, if at all, by the Illinois Supreme Court, and that Court denied leave to appeal. (Petitioners' Appendix A-34).

Argument [3], attempting to resurrect *Watson's* compulsory deference rule, runs afoul of three obstacles. First, *Watson* was between competing groups *both* claiming an association with UPCUSA, and therefore presenting a controversy characterized by the *Watson* Court as "essentially ecclesiastical" [80 U.S., at 670], and deference was urged [Id., at 669], and granted [Id., at 676], upon "questions ecclesiastical". *Watson* was not a case of severance—with one side, like Anna Church Corporation, eschewing UPCUSA affiliation—followed by a property dispute. There, property control only incidentally was involved, as it turned on who held the disputed offices. "[I]t was admitted that both 'the deed and the charter' contemplated the connection of the local church with the General Presbyterian one, and subjected both property and trustees alike to the operation of its fundamental laws" [13 Wall., at 683]. The Illinois Appellate Court properly held that on "the issue of property control, the *Watson* standard fails as a constitutional imperative". (Petitioners' Appendix A-26).

Secondly, this Court, in *Jones,* expressly rejected compulsory deference as a constitutional imperative [443 U.S., at 602, 605] for church property disputes.

Third, there was no decision to which a court could defer to resolve the dispute. Presbytery decided only that a "Session * * * be removed." (Petition p. 15) That was not any part of any dispute, but an *a posteriori* false issue [See *Presbytery of Riverside v. Community Church of Palm Springs,* 89 Cal.App. 3d 910; 152 Cal. Rptr. 854, at 862; *cert. denied,* 444 U.S. 974 (1979)] framed *after* Anna Church Corporation's severance, and after the property dispute erupted. As the Appellate Court found, the "Presbytery decision included no mention of severance * * * or of legal ownership of the church property". (Petitioners' Appendix A-28 to 29). This finding by the Ap-

pellate Court accords with the procedure for compulsory-deference application prescribed by its adherents in *Jones* [443 U.S., at 618-619, footnote 6], whereby application requires determination of "*whether* the dispute has been resolved within the structure of government and, if so, *what decision* has been made." [Emphasis supplied]. Here, no dispute was resolved by Presbytery. So, for the Appellate Court to have resolved the actual dispute, on the compulsory deference theory, where it had not been resolved "within [UPCUSA's] structure of government" [Id., at 619] would have involved the Court in an "invasion into the ecclesiastical purview", which it avoided. (Petitioners' Appendix A-30).

By its argument [4] UPCUSA advances certain selected, self-serving, paragraphs of its Constitution, and avoids mention of the civil-effect disclaimers. (Petition p. 26-27). UPCUSA does not contend that its selected paragraphs clearly or expressly confer ownership or control. Rather, it contends that they are "aspects" of control (Petition p. 26), or are "means" to assert and maintain control, and calls the Administrative Commission a "procedure" for control (Petition p. 26-27). Further, UPCUSA admits that the provision describing the Administrative Commission [Chapter XI, ¶ 41.15] must be "read in connection with" (Petition p. 28) the provision describing a Session [Chapter XI, ¶ 41.07] in order "to give effect" to enforcing "presbytery's authority over" (Petition p. 29)—not ownership and control of—the property.

These are the same, selected, paragraphs of its Constitution UPCUSA argued, unavailingly, to the South Dakota Supreme Court in *Foss v. Dykstra,* 342 N.W.2d 220, at 223-224 (1983); to the New York Court of Appeals in *Schenectady*, 62 N.Y.2d 110, 464 N.E.2d 454, at 461-462 (1984), *cert. denied,* 83 L.Ed.2d 404, 105 S.Ct. 514 (1985); and, to the Missouri Supreme Court in *Presbytery of Elijah Parish Lovejoy v. Jaeggi,* 682 S.W.2d 465, at 471-472 (1984), *cert. denied,* 105 S.Ct. 2361 (1985). The facts of those cases were, in *all* salient respects, precisely analogous to the facts before the Appellate Court of Illinois.

The Appellate Court of Illinois therefore reversed the Trial Court's reliance on these selected paragraphs, holding that those paragraphs did not "grant a *clear right* to denominational appropriation of local church assets". (Petitioners' Appendix A-28).

But, by its Petition UPCUSA again urges that a state Court become impermissibly entangled in "religious doctrine, practice, and administration" [443 U.S., at 605], to "impermissibly inquire into church polity". [*Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, at 723]. Because, each of the foregoing proscriptions would be violated were the Illinois Court required to resolve the ambiguities, religious meanings, and internal inconsistencies posed, for example, by an Administrative Commission acting with no explicit or implicit property ownership or control accoutrements under Chapter XI, Paragraph 41.15 (Petition p. 27), but "taking the place of the existing [if one there were] session", the claimed authority of which, under Chapter XI, Paragraph 41.07 (Petition p. 27), is subject to the prefacatory, and unquestionably religious precept of, "Directory for Worship".

Further, if a civil court were properly to treat UPCUSA's Constitution as it would any other civil contract, it would read and interpret it in its entirety. Then, the civil-effect disclaimer of the PRELIMINARY PRINCIPLES of UPCUSA's FORM OF GOVERNMENT, and the civil-jurisdiction disclaimer of UPCUSA's judicatories of CHURCH GOVERNMENT (Respondents' Appendix C), would have to be juxtaposed and reconciled with the Presbytery/Administrative Commission/Session paragraphs selectively marshaled by UPCUSA.

Resolution should be in purely secular terms, as the New York Court of Appeals did, finding that the power UPCUSA claims for its Sessions is belied by the civil-effect disclaimers, requiring that the claimed control by the Administrative Commission through Session "powers" be discounted. [*Schenectady,* 464 N.E.2d, at 462].

To avoid that result, UPCUSA now urges that the Illinois Court be required to resolve the ambiguities, as they were called in *Schenectady,* within UPCUSA's terms of interpretation, being the terms of its religious doctrine, practice and precepts.

UPCUSA's argument to a civil court would necessarily be that, within its ecclesiastical system of religious doctrine, practice and precepts, the paragraphs it selectively advances mean more than they say, and the civil-effect disclaimers mean less than they say. But that argument, and the interpretive difference between those conflicting Constitutional provisions, is then unquestionably resolvable *only* by a civil court's immersion into and acceptance of *purely* religious precepts.

UPCUSA offers *Jones* as compelling intrusion into its morass of conflicting constitutional provisions. But *Jones* compels, instead, "special care to scrutinize the document *in purely secular terms,* and *not to rely on religious precepts".* [443 U.S., at 604; Emphasis Supplied]. UPCUSA would have the Illinois Court so beyond "purely secular terms" and utilize "religious precepts" of interpretation and resolution of ambiguities and contradictions. UPCUSA's way would have been the First Amendment violation. The Appellate court scrupulously avoided such a First Amendment violation, thereby upholding this Court's barrier between Church and State.

CONCLUSION

The Appellate Court of Illinois neither has decided a federal question, nor, *a fortiori,* has it decided a federal question in a way in conflict with any applicable decision of this Court.

Respondents therefore respectfully request that the Petition be denied for lack of jurisdiction, or, in the alternative, be denied.

Respectfully submitted,

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343 South Main Street
Anna, Illinois
Attorney for Respondents

APPENDIX

APPENDIX A

THE FORM OF GOVERNMENT

CHAPTER XXXII—OF INCORPORATION AND OF TRUSTEES

* * * *

62.04 Each particular church shall be incorporated, cause a corporation to be formed and maintained, or in states forbidding the incorporation of religious bodies elect from its members individual trustees: to receive, hold, encumber, manage and transfer property, and to facilitate the management of its civil affairs in such manner as may be directed by the session of the particular church from time to time and according to this Constitution.

APPENDIX B

THE UNITED PRESBYTERIAN CHURCH
In the United States of America
1201 Interchurch Center
475 Riverside Drive
New York, N.Y. 10027
Telephone 212-870-2005

July 1980

Sisters and Brothers in Christ:

The Commissioners to the 192nd General Assembly of The United Presbyterian Church in the United States of America, meeting in Detroit, Michigan, May 27 - June 4, 1980, in an almost unanimous decision, after opening hearings in which all could participate and all points of view be expressed, voted to approve and send to the presbyteries the overture "On Property." During the coming year, our church will be engaged in a process of study and response to the chapter proposed for the Book of Order.

It will be the responsibility of each of our presbyteries to understand the intent and effect of this decision. It is, therefore, essential that you carefully study the full text of the General Assembly's action and note what it actually proposes.

This overture, if approved:

—Will make explicit what has been our denomination's understanding of how the holding of property relates to the nature and unity of our church;

—Will be an appropriate response to a decision in July 1979 by the U.S. Supreme Court (*Jones v. Wolf*) that, in effect, told us that the courts will take seriously our historic understanding of how property relates to the organic nature of the church only if we express that understanding explicitly in our Constitution.

—Will address those few instances when a majority of the members of a congregation votes to withdraw from The United Presbyterian Church in the United States of America.

This overture, if approved, will not result in any of the following:

—It will not lead to any usurping of the proper and clearly delegated rights of a session and congregation over its own life and the use of its material resources;

—It will not increase control by any judicatory of our church over the property (real or personal) of a congregation;

—It will not abridge the right of an individual or of several individuals in a congregation to withdraw from The United Presbyterian Church in the United States of America.

This new chapter on property is consistent with our Constitution and our long history as a church. In 1793, the "radical" or basic principles of our presbyterian polity were set down for the establishment of an American Presbyterian Church. The first of the principles is this: "That the several different congregations of believers, taken collectively, constitute one Church of Christ, called emphatically, the Church; that a larger part of the Church, or a representation of its, should govern a smaller, or determine matters of controversy which arise therein;..." (Form of Government, Chapter V, Section 1 (35.01).)

Following this principle, the judicatories of our church have consistently exercised proper authority, the higher or more inclusive over the lower and less inclusive, in matters of dispute. One of the values of this process is the avoidance of civil litigation. When matters of dispute arise in a congregation, for example, they are properly handled by the presbytery. We make no distinction between the spiritual nurture and oversight of

congregations by the presbytery and the use of physical resources that are the necessary equipment for ministry.

This General Assembly has acted out of its spiritual concern to be faithful to the unity of the church. The church is not a private possession but a sacred trust and its property cannot be separated from its life, ministry, and mission.

We submit this overture to you for thoughtful consideration in the spirit of the Apostle Paul, who wrote, "I therefore, a prisoner for the Lord, beg you to lead a life worthy of the calling to which you have been called, with all lowliness and meekness, with patience, forbearing one another in love, eager to maintain the unity of the Spirit in the bond of peace." (Ephesians 4:1-3.)

We ask you and your session to engage in study and prayer that presbyteries may act according to the will of God in this and in every matter. May God grant us the gift of understanding and love as we seek to be faithful.

The One Hundred Ninety-second General Assembly

/s/ Chas. A. Hammond
By: Charles A. Hammond
Moderator

APPENDIX C

THE FORM OF GOVERNMENT

CHAPTER I—PRELIMINARY PRINCIPLES

* * * *

31.08 Lastly, that, if the preceding scriptual and rational principles be steadfastly adhered to, the vigor and strictness of its discipline will contribute to the glory and happiness of any church. Since ecclesiastical discipline must be purely moral or spiritual in its object, and not attended with any civil effects, it can derive no force whatever but from its own justice, the approbation of any impartial public, and the countenance and blessing of the great Head of the Church Universal.

CHAPTER V—CHURCH GOVERNMENT

* * * *

35.03 These judicatories ought not to possess any civil jurisdiction, or to impose any civil penalties. Their power is wholly moral or spiritual, and that only ministerial and declarative. They possess the right of requiring obedience to the laws of Christ and of excluding the disobedient and disorderly from the privileges of the Church. To give efficiency, however, to this necessary and Scriptural authority, they possess the powers requisite for obtaining evidence and inflicting censure. They can call before them any offender against the order and government of the Church; they can require members of their own society to appear and give testimony in the cause; but the highest punishment to which their authority extends is to exclude the contumacious and impenitent from the congregation of believers.